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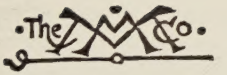

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Party Government in The House of Representatives

BY

PAUL DEWITT HASBROUCK, PH.D.

OHIO STATE UNIVERSITY

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PREFACE

WE are rather inclined to dislike what we do not understand. To most persons, even specialists in the fields of social science, the mystery of how things happen in the House of Representatives has been hard to explain. It may be, moreover, that this baffling quality of procedure helps to account for the fact that the "popular branch" of our Government has fallen at times into disfavor.

Yet the processes of the House evolved in direct answer to its needs. They are admirably suited in many respects to an assembly which, because of its size and the reach of the achievements demanded of it, necessarily stands in the van of legislatures.

"A serious attention to business marked the countenances of the Representatives, who were all very decently dressed." So runs the diary of Henry Wansey, a visiting English manufacturer, in satisfied approval of the Congress which sat in 1794. It takes more than a tourist's view to-day, however, to form a safe—or, perchance, an appreciative—judgment of the House. The brunt of the work is done off the floor. Even as to the events which take place in sight of the galleries, the observation of Mr. T. G. Williams fits Congress as well as Parliament: "Tactics have become a more effectual weapon than argument." (P. 240, "Social and Industrial Change.")

The present period in the life of the House dates from the last Congress with Mr. Cannon in the Chair. "Uncle Joe," the private Member, remained in the House (except one term) until 1923. But "Cannon-

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ism," the type of one-man control which operated through the office of the Speakership, began to be contested as soon as the Sixty-first Congress met in March, 1909. In the present work, therefore, the development of legislative organization is closely described, especially in the *Introduction,* beginning with that date. But the earlier background, and facts regarding Congressional elections, have also been drawn upon to explain the process by which the House is now controlled in the name of a political party.

I am under a deep sense of gratitude to many leaders in active politics. Some of these gentlemen were friendly counsellors during two years of personal contact with Congressional life, while others, in subsequent interviews, have shared generously of their time and ready information. Though not to be held responsible for any conclusions reached in this book, they were of invaluable aid in giving me astute, if varying, points of view now current in Congress. Several of them have read portions of the manuscript.

In university circles, I am particularly grateful for outlook and suggestion to Drs. Howard Lee McBain, Lindsay Rogers, Joseph P. Chamberlain, Arthur W. Macmahon, and others of the Faculty of Political Science of Columbia University; also to Dr. Frank H. Wood, and Professor (now Congressman) Frederick M. Davenport, of Hamilton College.

Most of all, to my Father, whose companionship and aid in preparation of the manuscript have been a boon beyond price, I return heartfelt thanks.

PAUL D. HASBROUCK.

POUGHKEEPSIE, NEW YORK.
August, 1927.

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PARTY GOVERNMENT IN THE HOUSE OF REPRESENTATIVES

INTRODUCTION

THE SEQUEL TO CANNONISM

Two schools of thought appear to be always present in Congress. Those who place their faith in freedom to follow their own independent judgment, answerable only to their constituents, constantly cross the path of men whose works are for the promotion of party government.

On the whole, the latter have had their way with the rules of the House. In the past 30 years they have been found as the defenders of the rules, resisting change. Such was not the case in the 80s and early 90s. The procedure of the House was then used in the service of obstruction.[1] But Speaker Reed, in the Fifty-first Congress, risking his political career in an effort to destroy dilatory tactics, established such rules and precedents as made a minority powerless to thwart the will of a majority of the House. Speaker Crisp, in the second of the two Democratic Houses

[1] Thomas B. Reed is reported, typically enough, to have said in the light of his early experience in Congress: "Ever since the slavery question came to trouble the peace of the country, the rules of the House have been framed with the view of rendering legislation difficult. The south was anxious that there should be ample means at its disposal to stop any measure detrimental to its cherished institution." (Quoted by Representative John M. Nelson in a speech before the City Club of Chicago, Oct. 14, 1908.)

which followed, was compelled in turn to adopt the "Reed rules," which thus became firmly established. They were ready tools in the hands of Speakers Reed, Henderson, and Cannon for the next 14 years of unchallenged Republican majorities (1895-1909).[1]

During this long period, the dictation of the party machine gradually became more arbitrary. Its chief strength lay in the Speaker's control over the fountain-heads of legislation: his power to appoint his friends to committees, the right of the Committee on Rules (of which the Speaker was a member) to change the rules without notice by majority vote of the House, the Speaker's power of "non-recognition," and the use of the previous question and other devices to prevent amendments.

It so happened that this growing boldness of the "Cannon machine" was in the interest of a more conservative type of Republicanism than that advocated by the occupant of the White House. "We succeeded in working together for some years," wrote Theodore Roosevelt in his *Autobiography*,[2] "I pushing forward and they hanging back." Afterwards, however, "I achieved results only by appealing over the heads of the Senate and House leaders to the people." The more militant of the progressive Members who responded to this appeal set out to destroy the House system of which Speaker Cannon was the head.

In this, they received aid and comfort from the Democrats. Representative Nelson of Wisconsin, in a speech on "The Necessity for Parliamentary Reform,"[3] commenting upon the important recommendations of President Roosevelt which the leaders had not allowed to come up for action by the House, added:

[1] Appendix A gives party strength in Congress since 1855.
[2] P. 383 (1916). [3] *Op. cit.*

"And mark you this, that during the last two sessions at least, not only a large majority of the Republicans were in sympathy with the President, but the Democratic minority publicly avowed its readiness to help put many of these recommendations upon the statute books." The Democratic platform of 1908 informed the country that the House "has ceased to be a deliberative and executive body, but has come under the absolute domination of the Speaker, who has entire control of its deliberations and powers of legislation." The Democrats pledged themselves to adopt "such rules and regulations to govern the House of Representatives as will enable a majority of its Members to dictate its deliberations and control legislation."

Nor was the movement for reform confined to the federal Congress. Many of the struggles in state legislatures during this early phase of the Progressive Movement centered about parliamentary questions.

Contrary to the usual outcome in Presidential years, the Sixty-first Congress, which was returned with the election of Mr. Taft as President, showed a narrowed Republican majority. There was also an increase of progressive sentiment within the party. These results were known before the second, or "hangover" session of the preceding Congress. Whereas the movement for changes in the rules had been desultory or ineffectual during the spring session, in December 1908 the Members who were in favor of curtailing the power of the Speaker organized to achieve their purpose. They met as often as three times a week during the entire session, and formed committees to seek correctives for the parliamentary situation.[1] Finally,

[1] Norris (Representative), "The Secret of His Power—A History of the Insurgent Movement in the House of Representatives," *LaFollette's Magazine*, Jan. 8, 1910.

they offered their propositions in writing, signed by 30 insurgent Republicans, to Mr. Champ Clark, the Democratic leader.[1]

President Taft called the Sixty-first Congress into special session for the revision of the tariff on March 15, 1909. It had appeared beforehand that there might be an amicable settlement of the demands for more liberal rules of procedure. The prospect for a real revision of the tariff downward, as foreshadowed in the speeches of the President-elect, was still bright. Party distinctions were said to be fainter than for a generation past. The "insurgents" had agreed that there should be no attempt to fight the election of Mr. Cannon as Speaker for a fourth term—a longer consecutive [2] period than any previous Speaker had occupied the Chair—, and the organization leaders had gone one step in rules reform. At the end of the preceding Congress the Committee on Rules had reported, and the House adopted (March 1, 1909) a rule for the establishment of the so-called "Calendar Wednesday". This set aside a day for the consideration of such unprivileged bills as the committees might select.

But a combination of insurgent Republicans with Democrats on March 15 defeated the usual motion to adopt the rules of the preceding Congress. The Democratic leader, Champ Clark, offered a resolution which would have taken away from the Speaker the appointment of all the important committees excepting Ways and Means, and which named a Rules Committee of 15 (instead of five), including four "insurgents" and six Democrats, but omitting the Speaker. The contest had become a "war of extermination." [3] The obvious purpose was to undertake a complete revision of House

[1] Clark, "My Quarter Century of American Politics," vol. II, p. 270 (1920).

[2] Henry Clay was Speaker for six terms, but not consecutively.

[3] Mr. Norris's characterization of the Speaker's attitude. *Op. cit.*

procedure, and the task was to be taken out of the hands of the old-line leaders.

The "insurgents" were ready to follow the Clark leadership in this program. But Representative Fitzgerald (Dem.) of New York City with a group of 22 bolting Democrats refused to join in such a violation of the principle of majority party control. They voted with 188 regular Republicans to defeat the previous question on the resolution. The outcome was that the House substituted the Fitzgerald compromise rules:

1. A Unanimous Consent Calendar was established, doing away with the necessity of consulting the Speaker before bills could be brought up for passage by common consent.
2. One motion to recommit was to be allowed after the ordering of the previous question on any bill or resolution.
3. The requirement to set aside Calendar Wednesday was raised from a simple majority, as provided by the rule adopted on March 1, to a two-thirds vote, as had been proposed in the original form of the resolution as introduced by Mr. Townsend of Michigan.

Speaker Cannon bore with good grace this slight curtailment of his power of recognition.[1] He and his lieutenants launched into a campaign through reputable periodicals to justify his theory of a responsible speakership.[2] Even the Parliamentary Clerk, Mr. Asher C. Hinds, contributed an able article in defense

[1] The ugly charge was afterwards made, but never proved, that he had conspired with the New York Democrats in order to save the greater part of his prerogatives in return for tariff favors.

[2] E.g., "The Rules of the House of Representatives: a Defense," by F. C. Stevens, a Member from Minnesota, *American Review of Reviews*, April, 1909; "The Power of the Speaker: Is He an Autocrat or a Servant?" by Joseph G. Cannon, *Century Magazine*, June, 1909. Mr. Cannon said in part: "The present Speaker welcomes the Fitzgerald amendment (creating the Unanimous Consent Calendar) as a relief from much drudgery in reading hundreds of bills, and also from the sham autocracy of his position in having the other Members ask his consent to the passage of such bills. More particularly does he welcome the amendment because it disposes of the old, threadbare excuse of Members who write to their constituents: 'I have tried to get your bill passed, but the Speaker would not recognize me.'"

of the existing organization of the House.[1] But the Republican insurgents felt that they had been cheated out of a real victory, and were particularly bitter against those Democrats who had acted independently of the Democratic party leadership.

The permanent organization of the House, in which due care was exercised that the "insurgents" should not receive pivotal positions, seemed to bar the road to independent action except of a revolutionary character. The occasion arose a year later, in the second session of the Congress, when Speaker Cannon sustained an attempt to set aside Calendar Wednesday by a claim of constitutional privilege for an amendment of the census act. This touched the Fitzgerald Democrats in a sensitive spot. They joined in the unusual action of overruling the Speaker, in order to preserve the integrity of Calendar Wednesday. The next day, however, when the claim of constitutional privilege was made under different circumstances, and the Speaker declined to rule, the House allowed the claim by the overwhelming vote of 201—72.

This decision was not partisan or factional, for many prominent "progressives" voted against the privilege. But it was seized upon later in the day by Mr. Norris of Nebraska to claim the same right of recognition for a reform of the rules. This, he claimed, was also a constitutional function of the House. Speaker Cannon withheld his decision, while his lieutenants played to secure an adjournment. After the debate had extended through most of the night, an agreement was reached the next morning that the Speaker would give his ruling the following day. Accordingly, on March 19, 1910, he held the Norris resolu-

[1] "The Speaker of the House of Representatives," *American Political Science Review*, May, 1909.

tion not in order, and was a second time overruled by a vote of the House (162—182).

Mr. Norris then moved the previous question on a substitute resolution representing the views of his allies more accurately than the one he had offered two days before. He had wished a large Committee on Rules, of 15 members geographically distributed; but as finally adopted, the resolution provided for increasing the size of the Committee from five appointed by and including the Speaker, to ten members excluding the Speaker. Election was to be by the House. This was the extent of the action which, begun on March 17, has been called the "revolt of St. Patrick's Day, 1910."[1]

Speaker Cannon followed what to him appeared the logic of the situation by inviting a motion to declare vacant the office of Speaker. If he no longer held the confidence of the House, he felt, it should depose him, as it had the right to do, instead of seeking to undermine his power. Such a motion was made by Mr. Burleson of Texas, and received the support even of the Fitzgerald element among the Democrats. It failed to carry, however, because the insurgent Republicans, who had never been united in personal opposition to Mr. Cannon, were unwilling to undertake a complete reorganization of the House. The bi-partisan alliance was parliamentary and not political. In fact, during this Congress the breakdown of party barriers brought about a union of the Republican "regulars" with Democrats about as often as of Democrats with Republican insurgents. In 1909 the Republican "machine"

[1] For an excellent running narrative of this episode, see "The Committee on Rules and the Overthrow of Speaker Cannon," a Columbia dissertation by C. R. Atkinson (1911). The story of the same events was published in the *Political Science Quarterly* for Sept., 1911, pp. 381-414, under the title, "The Syndication of the Speakership," by Atkinson and Beard.

in the House had been glad enough to find refuge in the Democratic haven of the Fitzgerald compromise, and it was the observation of the *Washington Times* on May 26, 1910 that "it is the almost invariable practice of Senator Aldrich when he gets into a hole as to some matter on which he wants to control the Senate, to negotiate with the Democrats. He did this on the tariff and is doing it on the railroad bill."

That it was a revolution, there was no doubt at the time or afterwards in the minds of the chief actors. During the debate on the constitutional privilege of the Norris resolution, Mr. Champ Clark, the Democratic leader, frankly admitted: "We had made up our mind months ago to try to work the particular revolution that we are working here to-day, because, not to mince words, it is a revolution."[1] Afterwards, on June 4, Representative Underwood (Dem.) made a similar frank admission:

> "I do not hesitate to say that when we overruled the decision of the Speaker and elected the new Committee on Rules some months ago I thought the decision of the Chair within the terms of the rules. I said frankly then, as I say now, that the time had come for a revolution; that it was the only way the real majority of the House could throw off the shackle of a minority; and the House, with the approval of the country, made the revolution effective by writing a new law into the rules of the House and by the divorcement of the Speaker from the Rules Committee. That revolution was justified because it was the only way the House could carry out the will of the majority of the House."[2]

On the same occasion, when progressive legislation had been put forward in an irregular manner, Mr. Cooper of Wisconsin, a chief man among the Republicans who had revolted in March, voted to sustain the adverse ruling of the Chair, though he sympathized with the purpose of the amendment. He would not vote to

[1] Congressional Record, 61st Congress, 2nd session (hereafter cited as "C. R. 61-2"), p. 3430; Mch. 19, 1910.
[2] C. R. 61-2, p. 7414.

override the rules or precedents, he said, as an ordinary expedient, but only on "the greatest of provocations."[1]

Though Cannonism had been repudiated, Speaker Cannon and his friends continued in control during the three months remaining before the end of the session, and during the third, or "short", session of the Congress. They were able to nullify in large part the two chief concessions into which they had been forced.

The Speaker, it is true, lost his key position on the Rules Committee, of which the occupant of the Chair had been a member for 52 years. But not an "insurgent" Republican was included in the enlarged Committee of ten, which was controlled by the Speaker's friends.[2] An English observer scouted the significance of the change from three Republicans and two Democrats to six Republicans and four Democrats:

> "Instead of the Speaker and his two colleagues meeting," he said, "the six majority members meet in private and after agreeing to a rule submit it to the four minority members of the Committee. This is the triumph of reform. The rights of the minority have been won by substituting four-tenths for two-fifths! With such trumpery toys does reform distract that overgrown baby, the public."[3]

The second action toward liberalizing procedure was the only step in revision of rules undertaken by the new Committee. On June 17, 1910 it secured the adoption of a rule by which committees might be discharged from further consideration of bills which they failed to report. This liberal gesture of the Committee was coldly tolerated by such "organization" Republicans as James R. Mann, who proceeded in the December

[1] C. R. 61-2, p. 7411.
[2] For the effect of caucus nomination, see page 42.
[3] Low, "Legislative Procedure in Two Anglo-Saxon Countries," *Proceedings of the American Political Science Association*, vol. X, p. 153.

session, by abusing the rule, to demonstrate that it was "unworkable." [1]

The complete change which ultimately took place in the organization of the House did not follow directly, therefore, from the attack upon "Cannonism." The actual overthrow of the old system was an incident to the far-reaching political effects of that attack. The great split in the Republican party, wrote Champ Clark in his autobiography, "began in the House, and it was consummated at the Chicago convention of 1912. If we had not made the rules fight in the House, a Democratic House would not have been elected in 1910, and a Democratic Senate, House, and President would not have been elected in 1912." [2]

The wholesale price of farm products, it is true, took a violent cyclical drop during 1910-1911. The popular Roosevelt administration, which was now at an end, had held back the natural oscillation between parties which was due to occur. The Payne-Aldrich tariff failed to give the promised relief from high rates. But unquestionably a chief cause which led the country to return a Democratic majority by the election of November 1910 was the parliamentary situation in the House.

The vote for Speaker on April 4, 1911 stood: Clark 220, Mann 131, Cooper 16, Norris 1. The Democrats had control for the first time in 16 years, and by a safe margin. The Cannon "regulars," to complete the turnabout, discomfited the majority by assuming the rôle of pseudo-progressives.

Chairman Robert Lee Henry of the Rules Committee made the adoption of the rules, with such changes as had been determined upon in caucus, a

[1] See *infra*, chapter VIII, esp. pp. 142 *ff.*

[2] "My Quarter Century of American Politics," vol. II, p. 260 (1920).

party question. Four hours of debate, and only one substitute resolution were allowed. The Republican progressives, despite the protests of Messrs. Lenroot and Norris, were entirely cut out of the picture. The one substitute was offered facetiously by minority leader Mann. It was the identical resolution which the Republicans had feared so much when put forward two years before by Champ Clark, calling for a complete revision of the rules. Mr. Mann openly declared that he would not vote for it himself, but "wanted to have the pleasure of seeing the Democratic side of the House, then hailing and hurrahing for it, now voting against it."

Besides adopting the several new arrangements which they had helped to force upon the Republicans in the last two Congresses, the Democrats made five concessions to the reform sentiment of the House, and included two measures for their own protection:

1. They abolished six superfluous committees.
2. They took away from the Speaker the last of his three great powers, which had been recognition, membership on Rules, and the appointment of committees. Of these, the third was perhaps the most important. The new rule provided for the election of standing committees by the House.
3. The Fitzgerald rule establishing a Unanimous Consent Calendar was changed, by requiring that a bill be on that Calendar at least three days, thus giving Members a chance to study it, before it could be called up. A second chance was also allowed on a succeeding Monday for a bill to which objection had been made.
4. Fridays were designated as the days on which the Private Calendar would be in order, although this order of business was not made mandatory, as were the other calendars. This provision wrote into the permanent rules of the House a practice that had been followed by means of special orders for a number of Congresses. It contained the added refinement of assigning second and fourth Fridays to pension claims, and all other Fridays to the residue of private claims. (Rule XXIV, cl. 6.)
5. An attempt was made to strengthen the discharge rule against its abuse by Mr. Mann.[1]

[1] See chap. VIII, p. 145.

6. The so-called Holman rule, dropped when the Republicans came into power in 1895, was restored. Ordinarily, general legislation is not allowed on appropriation bills. The Holman rule (rule XXI, clause 2, second sentence) makes certain exceptions, however, in the case of changes which tend to retrench expenditures, particularly amendments having the approval of the committee with jurisdiction over the subject matter.[1]

7. A new paragraph (clause 3) was added to rule XXI, as follows: "No amendment shall be in order to any bill affecting revenue which is not germane to the subject matter in the bill; nor shall any amendment to any item of such bill be in order which does not directly relate to the item to which the amendment is proposed."[2]

There are few self-denying ordinances in the history of legislative assemblies. The condition necessary to obtain concessions has generally been a narrow paper majority, with an independent group demanding a price in the direction of continued independence in return for its support. No such necessity existed in the Sixty-second Congress, as it had in its predecessor. The Democratic revision of 1911 was thus a voluntary step, unselfish in the main; but it very nearly set the limit of action by the Democrats for the improvement of legislative methods during the eight years of their control.

[1] Mr. Dalzell (Rep.) declared that when the Holman rule was formerly in effect (1876-1895) it had allowed the Appropriations Committee to pass far-reaching legislation, provided the Chairman of the Committee of the Whole could be persuaded that the general effect would be reduction in expenditures; and instanced the repeal of the federal election law, reorganization of the Army and Navy, and free seeds. But Chairman Henry in advocating the rule expressed the opinion that it would cut down appropriations.

The true reason for the readoption of the rule at this time, however, seems to lie in the statement of Representative Sherley (Dem.) that "a Democratic Congress, confronted with the other branch of the national legislature in control of the opposite party, can well afford to give to itself such power as will enable it to enforce those demands which it believes to be in the interest of the people, whose mandate it so recently bears. . . ." (C. R. 62-1, p. 71; Apr. 5, 1911.) Then, too, the Republican President, unable to veto separate items in a great appropriation bill, would hesitate to cut off the supplies of the Government. He might be induced to accept legislative "riders" when he would oppose like principles in separate bills.

[2] Thirteen years later, Mr. Garrett, leader of the Democrats, who were once more in the minority, led a successful bi-partisan revolt for the repeal of this clause. During the debate, the fact was brought out (*infra*, pp. 21 *f*) that this rule had been proposed in 1911 by action of the Democratic caucus. The obvious purpose was to preclude amendments to the Underwood tariff and other revenue bills.

The Sixty-third Congress was overwhelmingly Democratic, and the caucus of that party was supreme. The rules of the previous Congress were adopted by "steamroller" methods in both the Sixty-third and the Sixty-fourth Congresses, and on the latter occasion Mr. Lenroot drew from Chairman Henry of the Committee on Rules the admission that no amendment had been considered in any formal session of the Committee during the two years of the preceding Congress.[1] It was considered expedient at the organization of these Congresses to make some reassuring statement that the Committee would "deliberately consider" the many proposals for change, "with an abundance of time for each Member to present his views";[2] but the deliberateness of the Committee seems to have reduced to a minimum the rights of the Members in this respect. The Progressive group had become distinct from the two old parties, and, so delimited, failed to find much support in either of them for its program touching the rules.[3]

One change, however, perfecting Calendar Wednesday, was reported by the Committee and carried by a non-partisan vote of the House on January 18, 1916. Although the rule as adopted in 1909 provided for the calling of all committees in turn, as a matter of fact, one measure could consume the Wednesdays of an entire session. That day of the week had become a

[1] C. R. 64-1, p. 8; Dec. 6, 1915. [2] C. R. 63-1, p. 71; Apr. 7, 1913.
[3] At the organization of the Sixty-fourth Congress, nine Democrats did bolt their party on the issue of rules revision. But this number was ineffectual in a Congress which gave Mr. Clark 222 votes for Speaker as against 175 for Mr. Mann.

holiday (instead of the intended "Holy Wednesday" to be set apart for a systematic call of committees). General debate had been long-drawn-out, preventing the call from proceeding, while the time of the House was consumed with the discussion of "Jack" Johnson's wedding, or other frivolous topics. The new rule limited general debate on any one measure to two hours, and confined all debate to the subject matter of the bill. It also provided that after one committee had consumed two Wednesdays the call should proceed to the next committee, unless the previous question had been ordered on any bill, or the House by a two-thirds vote directed otherwise.

The Sixty-fifth Congress was the war Congress. Called into session on April 2, 1917 to hear President Wilson's war message, it sat almost continuously during the two years of its hectic life. The stage had been set for a general revision of rules. *The Searchlight,* an organ of rules reform, in its March issue hailed the close division between parties as a signal for action. Seldom, indeed, does control hang on so slim a thread. Mr. Clark received only 217 votes for Speaker, when 215 were necessary for a majority of the 428 voting. But his appeal upon resuming the Chair was to subordinate all else to the prosecution of the war: "On many questions we are 'distinct as the billows, yet we are one as the sea,' when the honor and safety of the Republic are involved. Politics finds no place in this House."

The one change recommended by Mr. Pou of the Rules Committee, and adopted by the House, was in support of the leadership of both parties. It provided "that any motion or resolution to elect the members or any portion of the members of the standing committees of the House and the joint standing committees shall not be divisible."[1] A tendency had been noted on the part of the House to call into question certain individual nominations to committees. The new restriction, taking away the general privilege of dividing a question into substantive propositions, made sure that in future the slates should go through precisely as authorized by the party caucuses.

In the midst of the war, Representative Alvan T. Fuller, a business man and first-termer from Massachusetts, called the attention of the country to inefficiency in Congress by resigning from the Committee on Expenditures in the Interior Department. Great publicity was given his letter,[2] addressed to the Speaker, in which he characterized that Committee as useless, and pointed out how frivolous was the arrangement for supervising expenditure. "The President is asking our business men to economize and become more efficient," he concluded, "while we continue to be the most inefficient and expensive barnacle that ever attached itself to the ship of state." The press of the country took up his cry for improvement. The agitation doubtless had its effect in persuading Congress to create a Legislative Drafting Service in the third session, and helped prepare the way for a national budgetary system, which was installed in 1921.

President Wilson on technical grounds vetoed the Budget bill passed in the Sixty-sixth Congress. But the House, which was again in Republican control, voted on June 1, 1920 certain supplemental rules changes which survived. Instead of the eight committees "of advocacy" among which the annual appropriation bills had been distributed, the Committee on Appropriations was given exclusive jurisdiction.

[1] Proviso of clause 6, rule XVI; added April 2, 1917.
[2] Printed originally C. R. 65-2, p. 2743; Feb. 27, 1918.

It was enlarged to 35 members—sufficient for division into the necessary subcommittees. In thus making the other seven committees purely legislative, the House reverted to the system of centralized responsibility which had been in vogue from 1865, when the Committee on Appropriations was established, until the years 1880 and 1885, when portions of the appropriation bills were distributed to other committees.

The control of the House over appropriation bills after they had gone over to the Senate and into conference was at the same time greatly increased. No amendments added by the Senate, which would have been in violation of the House rules if they had been offered in the House, should be agreed to by House conferees except as specific authority might be given by the House by a separate vote on each such amendment.[1] The practice of executive departments desiring appropriations not authorized by existing law, and thus debarred in the House, had been to get such items inserted by the Senate. This method sometimes involved scant scrutiny of the purposes for which the money was to be used. Legislative "riders," too, had been attached to appropriation bills by the Senate. The House rules permit this practice only if such provisions reduce expenditures. On the other hand, the Senate had amended purely legislative bills so as to appropriate money. The Senate, moreover, had developed the habit of asking for a conference without having the bill come back to the House for such action on amendments as the House might see fit to take. During the few remaining days before adjournment, and in the third session of the Congress, the effects of the new rule were marked in compelling the Senate to respect the spirit and purpose of the House rules.

[1] Substance of clause 2, rule XX.

"The pendulum will swing back," is reputed to have been a confident assertion of former Speaker Cannon. The Sixty-seventh Congress, which was the last of his active service, did at all events see the branches of the government once more under Republican control, and the return of an assertive leadership in the House.[1] Mr. Harding in his campaign had pledged the Republicans to inaugurate "party government, as distinguished from personal government, individual, dictatorial, autocratic, or whatnot." Although he soon found it impossible to withhold his influence for or against certain measures, the new President began his administration in a spirit of reaction to President Wilson's control of the three Democratic Houses.

Chairman Campbell of the Rules Committee was able to secure adoption of the rules without change. The provision that rules may be suspended only by a two-thirds vote is, in theory at least, for the protection of the minority. This theory the Democrats now interpreted to refer to the political minority. Since the Democratic party did not compose even one-third of this Congress, they tried to put forward an amendment making three-fourths necessary for suspension. But the Republican "steamroller," under Mr. Campbell's crisp command for the previous question, did not pause.

The huge Republican majority proved to be unwieldy. The wide margin of safety discouraged careful and considerate leadership, and encouraged schisms within the ranks. Moreover, for the first time in the history of the United States, there were four sessions of a Congress, two of which took place after

[1] This characterization does not apply to Mr. Gillett, who was reelected Speaker by the overwhelming vote of 297 as against 122 for the Democratic contender, Mr. Kitchin. But the Mann-Cannon-Mondell-Fordney faction among the Republicans gained control of the Committee on Committees, and so of the House.

the election had repudiated many of the chief actors. There were 114 Republican "lame ducks," including Messrs. Campbell, Chairman of the Committee on Rules; Mondell, Republican Floor Leader (who had been an unsuccessful candidate for the Senate); and Fordney, Chairman of the Committee on Ways and Means.[1] During the illness of Speaker Gillett, these men controlled the business of the House, refusing action on some matters toward which, it was claimed,[2] a majority of the Members were favorably disposed.

Not only did the Sixty-seventh Congress give rise to complaint within the House itself; it was nearly repudiated by the country. The Republican strength in the Sixty-eighth Congress was so reduced that there was a scant margin of only nine votes. Moreover, Mr. Mann, whose practical jokes at the expense of the rules reformers had long served as deterrents, had died, and "Uncle Joe" Cannon had retired to his home in Illinois. The way was again open to secure desired changes in the rules.

A special committee could not be created to sit between Congresses, since a House has no power to continue a committee beyond its own life. But before the

[1] The passage of the ship subsidy bill by a vote of 208 to 184 on November 29, 1922, was accomplished only with the support of 94 of these men who had been "thrown overboard" by their constituents. President Harding, in his appeal to Congress for passage of this measure, after the election, made a remarkably frank argument:

"In individual exchanges of opinion not a few in House or Senate have expressed personal sympathy with the purpose of the bill, and then uttered a discouraging doubt about the sentiment of their constituencies. It would be most discouraging if a measure of such transcending national importance must have its fate depend on geographical, occupational, professional, or partisan objections. Frankly, I think it loftier statesmanship to support and commend a policy designed to effect the larger good to the nation than merely to record the too hasty impressions of a constituency." C. R. 67-3, p. 10; Nov. 21, 1922.

[2] *Infra*, pp. 149 *ff.*

new Congress assembled, Members who were prepared to use "balance of power" tactics to liberalize procedure met informally in a "progressive caucus." According to the *New York Times*,[1] 25 to 30 Members were present. The meeting adopted a legislative program, but declared that the last Congress had demonstrated there was little hope for the enactment of such a program under existing procedure. "The first duty of the Congress," therefore, was to effect improvement in the House rules.

"Insurgent" Members drove the opening wedge by refusing for a time to lend support to a Republican organization of the House. For two days Congress was held in deadlock, with four nominations for the Speakership and none able to command a majority. The ballots which were taken on each day showed Messrs. Gillett and Garrett, nominees of the Republican and Democratic caucuses, receiving about 195 votes each, Mr. Cooper of Wisconsin 17, and Mr. Madden of Illinois (who was not voluntarily a candidate) 5.

The deadlock was broken by an agreement on the evening of December 4 between Mr. Longworth, Republican Floor Leader, and Messrs. Nelson (representing the supporters of Mr. Cooper), Woodruff (representing those who voted for Mr. Madden), and La Guardia. The rules were to be adopted without change for 30 days. During that time the Committee on Rules was to consider proposed amendments, and to make a report, which was to be open to "reasonable discussion, amendment, and record votes of the House."[2] Thereafter the truant Republicans, on their part, assisted in the reelection of Mr. Gillett as Speaker on the first ballot.

[1] Dec. 1, 1923.

[2] Read into the *Record* by Mr. Nelson, and corroborated by Mr. Longworth, C. R. 68-1, p. 14; Dec. 5, 1923.

On December 17, Representative Rainey (Dem.) of Illinois congratulated Mr. Longworth on having passed safely "between the Scylla of progressive republicanism—if anybody knows what that is—and the Charybdis of conservative republicanism, and everybody knows what that is. . . . There is not a scratch on the ship. The paint even is absolutely intact." Mr. Nelson, who had gained the concession of being placed on the Rules Committee, "is surrounded," he added, "by a guard of seven stalwart Republicans.[1] . . . From his safe position behind the bars he can continue to bark dismally at the passing world."

However, on the 20th, Chairman Snell announced hearings "relative to the proposed changes of the rules," and invited Representatives to appear before the Committee. These hearings ended on January 7, after which the Committee met in executive session. Of the Committee report, which was made on the 14th, Mr. Nelson said: "This day these proceedings and the action of the Committee on Rules justify the contest that some of us have been making." Mr. Longworth, he added, "has kept his word in letter and in spirit. . . . He knows a stone wall when he sees it, and he can get around it."

The full and free discussion of the rules for five days thereafter was a unique procedure for the House of Representatives. Not only was time granted to all Members who desired to be heard—for the first three days, in fact, Members gained the floor under the general rules of the House, which impose an hour limit only—but the speeches consistently bore upon

[1] Mr. Schall, of Minnesota, however, was also a former Roosevelt Progressive, thus, with the four Democrats, making six of the 12 members of the Committee. And Mr. Johnson of South Dakota, another Republican member, had had cause in the preceding Congress to regret the lack of a workable discharge rule (see *infra*, p. 149).

the proposals immediately before the House. Six major changes were made either at the recommendation of the Committee or as a result of perfecting amendments acceptable to the Republican leaders. One old rule, in addition, was taken off the books on Democratic initiative, against the will of the majority leaders.

As these changes will be treated under the chapters dealing with their special topics, it will be sufficient merely to list them here. A new Committee on World War Veterans' Legislation was created, taking much of the jurisdiction on this subject which had been vested in the Committee on Ways and Means. Election contests must be reported to the House within six months of the time a Congress meets, except that nine months are allowed in the case of Alaskan contests. A new provision prevented the Chairman of the Committee on Rules from defeating the will of his Committee by the "pocket veto" method. He was also forbidden to call up a report on the same day on which it is presented, except by a two-thirds vote of the House—unless it be during the last three days of a session. The Discharge Calendar was advanced to first order of business on two Mondays a month, and the rule was made workable. The Unanimous Consent Calendar was changed to Consent Calendar because three objections instead of one were required to strike a bill off when it comes up the second time.

On January 11, in an executive session of the Rules Committee, the Democrats had tried to strike out the clause which required amendments to revenue bills to be germane to specific items. Failing then, Representative Garrett appealed to the House itself on the 14th. The restriction, he said, had been so strictly construed that "you cannot move to take an item from the dutiable list and put it on the free list, nor can you

move to take an item from the free list and put it on the dutiable list."[1] Mr. Snell stated that "on this side of the House we are absolutely opposed to striking this clause out of the Standing Rules." But Mr. Nelson denied that Republicans were "unanimously against this motion. . . . Some of us would like, for instance, to restore the excess-profits tax. That is absolutely prohibited if this remains in the rules." The Garrett motion carried on a roll-call vote by 208 to 177. Besides the Cooperites and three of those who had voted for Mr. Madden for Speaker, six other Republicans refused to follow the party leadership, and voted for the repeal.

No other changes, of the many proposed during the first session of the Sixty-eighth Congress, received favorable consideration. Chairman Snell assured interested Members that when the business which was then before the Committee on Rules was disposed of, they would begin hearings again, and "discuss fairly and squarely every proposed amendment."[2] But this time did not arrive for over two years, and then under widely different conditions.[3]

The Sixty-ninth Congress, elected with President Coolidge, witnessed another return of the pendulum. The Republican strength of 25 more than a majority was "safe" without being unwieldy. The party leaders therefore prepared to assume full responsi-

[1] For the insertion of this clause when Democrats were in control, see *supra*, p. 12.

[2] C. R. 68-1, p. 945; Jan. 14, 1924.

[3] On April 8, 1926, a hearing was granted upon a resolution (H. Res. 53) introduced in the Sixty-ninth Congress by Mr. Fish (N. Y.), urging a Committee on Revision of the Rules. "Membership on any other committee except the Committee on Rules shall not preclude membership on this Committee." Representatives Luce (Mass.) and Cannon (Mo.) appeared in support of a general revision, to bring the rules of the House into harmony with present practice, and to introduce certain features of technical improvement.

bility for the record of the session, while Mr. Nicholas Longworth, the new Speaker, revived the theory of the political functions of the Chair. Upon taking the gavel after his election on the first ballot, he said:

"I believe it to be the duty of the Speaker, standing squarely on the platform of his party, to assist in so far as he properly can the enactment of legislation in accordance with the declared principles and policies of his party and by the same token to resist the enactment of legislation in violation thereof." He wished the House to take its rightful place as "the great dominant legislative assembly of the world," and spoke for the "divorcement of the Congress from the executive branch."[1]

"The country," said President Coolidge in his annual message, "does not appear to require radical departures from the policies already adopted so much as it needs a further extension of these policies and the improvement of details. The age of perfection is still in the somewhat distant future, but it is more in danger of being retarded by mistaken government activity than it is from lack of legislation." What wonder, at a time when the Administration thus read the state of the country—and perhaps correctly so,—that the House supplanted the workable rule for the discharge of committees, and practically closed the door to legislation other than that which might be advanced by consent of the party leaders?[2] Nevertheless, the shift of six votes would have defeated the motion.

With such a warning, the Republican leaders had to steer warily. But the wheel was not wrenched from their grasp. "By what we do we will be judged and

[1] C. R. 69-1, p. 382; Dec. 7, 1925.

[2] For the "denatured" rule which was substituted, see *infra*, pp. 163 *f.*

not how we do it,'' [1] was the philosophy of Mr. Snell in moving the adoption of rules for the Congress. But the leaders of the House showed a disposition to yield on non-essentials, and were slow, after the first day, to raise such party issues as might provoke revolt.

The tactful manner in which Speaker Longworth handled troublesome situations with the least possible friction is instanced by his action on the question of constitutional privilege. This bogey, which was the undoing of Speaker Cannon, again raised its vexatious head on April 8, 1926. Mr. Barbour of California claimed privilege on behalf of a motion to bring up a bill for the reapportionment of Representatives in Congress under the Fourteenth Census. Mr. Snell made the point of order that the motion was not in order. An extended debate disclosed the fact that the precedents for 50 years had, almost without exception, supported the claim of constitutional privilege. The Speaker stated his opinion, however, that the precedents ought to be overruled. Accordingly, he refrained from ruling, and put the question to the House for determination. The vote was 87 to 265 against allowing the claim. Thus a solid precedent was set up to bar the opening by which Mr. Norris and his fellow insurgents of 1910 had made their historic sally against Speaker Cannon.

Genial as was the manner of the new Speaker when in the Chair, his influence continued incisive in Republican councils. Upon occasion, too, he expressed his personal opinion upon the merits of legislation by speeches from the floor.[2]

The principles of party responsibility which Mr.

[1] C. R. 69-1, p. 389; Dec. 7, 1925.

[2] E.g., on Jan. 7, and Feb. 24, 1927. Speaker Clark and earlier incumbents had felt free to enter into debate upon public questions, but Mr. Gillett during the six years just preceding had refrained from doing so.

Longworth had sounded as the keynote of the Congress were variously received by the press. The *New York World* [1] contained a cartoon which showed ''Czar Nicholas'' presiding with crown and royal ermine. A placard prominently proclaimed that ''the Minority is out of order.'' The editorial column alleged that ''obviously we have here the potentiality of a tyranny as intolerable as 'Czar' Cannon's became.'' The *Louisville Courier-Journal* [2] commented editorially that Mr. Cannon was spending his old age at Danville, Illinois, but ''his autocratic partisan spirit that split his party wide open 15 years ago and smashed the Taft Administration still rules his old Republican associates of the House, and rules them even more absolutely than it did even in the most despotic hour of his tyrannical Speakership. . . . The stone rejected by the Dolliver-Roosevelt Republicans of 1910 has become the cornerstone in the Republican structure of 1925. Cannonaded then, 'Cannonism'—with all that it connotes—becomes canonized now.'' The *Wall Street Journal*,[3] however, spoke in terms of highest approval of ''the growing good sense and efficiency of the House of Representatives,'' as ''shown once more by a revision of its own rules.''

[1] Dec. 9, 1925. [2] Dec. 9, 1925. [3] Dec. 10, 1925.

CHAPTER I

THE CAUCUS

THE most crucial time in the life of a Congress is often before its birth. The party caucus meets to nominate its candidate for Speaker, and to choose a Floor Leader and a Committee on Committees.

This meeting is sometimes held considerably in advance of the time when Congress is to convene. The Democrats caucused on January 19, 1911, nearly three months before the Sixty-second Congress came together, and, besides providing for the organization of the House, voted certain fundamental changes in the rules. Accordingly, when Mr. Henry made his motion for the adoption of the new rules on the second day of the Congress,[1] the members of the majority party were bound by caucus action to the specific items of his proposal.

The Republicans caucused on February 27, 1925, and selected Representative Nicholas Longworth as their candidate for Speaker, although the Sixty-ninth Congress did not come together officially until the following December. It was at this caucus that the status of those who had supported Senator LaFollette for President was made clear. Not only did these 13 Members fail to receive invitations to attend, but the statement was made by Mr. Longworth that they had "read themselves out of the party," in which sentiment President Coolidge concurred.

[1] *Supra*, Intro., pp. 10 *f.*

The preliminary Republican caucus of the Seventieth Congress took place in the hall of the House on February 21, 1927. The presence of Representative Nelson, manager of the LaFollette-Wheeler campaign in 1924, marked the return of the "insurgents" to a standing within the regular Republican organization.

The caucus is summoned again just before or after the time when Congress meets, for the purpose of approving the work of the Committee on Committees. At this time it also deals with matters of Capitol patronage, and on some occasions decides broad questions of legislative policy.

Political parties themselves sprang from the state caucuses of 1790 and the following years. There, according to Ostrogorski, was "introduced, for the first time, a permanent party organization, nestling under the wing of the legislatures and composed of their very elements."[1] Until 1824, in fact, the members of each party in Congress nominated the candidates for President and Vice President. Both the Federalists and Republicans, moreover, determined important policies in party caucus, and Mr. Jefferson when President used this means of securing harmonious and concerted action with an otherwise chaotic House.[2]

With the advent of the National Convention, and the development of the committee system, the early primacy of the Congressional caucus came to an end. But its activities, limited in subsequent years to the affairs of the House itself, have continued to be decisive in matters of organization. Sometimes, too, under the urge to aggressive party action, the caucus

[1] "Democracy and the Organization of Political Parties," p. 11 (1902).

[2] Harlow, "Legislative Methods before 1825," p. 184 (1917).

has regained its vitality in the shaping of legislative policy.

The extent to which the caucus has been called into action in recent years for purposes other than those of mere organization has varied widely in different Congresses. When the opposition of the minority becomes sufficiently militant, as during the Williams filibuster in the spring of 1908, we find the Cannon régime resorting to the use of the caucus to hold the majority in line. Currency legislation was considered, and hearings, in fact, were held by the Republican caucus, resulting in the introduction and passage of the Vreeland bill.

As a general principle, however, when there is concentration of power in the hands of the Speaker or of other leaders, the caucus is little used, while in Congresses where there is dispersion of power, the caucus reasserts itself. After the Democrats gained control in 1911, their leadership was less strongly intrenched because of the changes which they themselves had helped to bring about in the organization of the House. They sought a counterpoise through increased discipline of the caucus, which debated the details of such important legislation as the Glass currency bill of 1913 (the Federal Reserve act), and the Clayton anti-trust act. The Committee on Rules, divorced from the Speaker, now came under the direct control of the caucus.

Again, there appears to be a tendency to greater use of the caucus when a party first comes into power, before leadership has become localized in certain members of the party, or in the President. Not only was this the case when the Democrats first came into power under President Wilson, but the activity of the Republican caucus seems to have been greatest in the Sixty-seventh Congress, just after the Republicans

regained control of the government under President Harding.

Under ordinary conditions, however, the party leaders prefer to get along without the caucus. They are inclined to be chary about calling it into action, except as some real necessity arises. After organizing the House in the Sixty-ninth Congress, the Republican party did not meet in caucus at all during the "long" session, except on January 8, 1926, for the purpose of electing the Republican Congressional Committee.

The Republicans have no rules of the caucus, which acts by ordinary majority vote. They are content to use the rules of the House so far as these are applicable, supplemented by such agreements as may occasionally be made, *à propos*.

The Democratic caucus, however, goes by a preamble and 11 rules of its own adoption. Rule 7 reads:

"In deciding upon action in the House involving party policy or principle, a two-thirds vote of those present and voting at a caucus meeting shall bind all members of the caucus[1]: *Provided,* The said two-thirds vote is a majority of the full Democratic membership of the House: *And provided further,* That no member shall be bound upon questions involving a construction of the Constitution of the United States or upon which he made contrary pledges to his constituents prior to his election or received contrary instructions by resolutions or platform from his nominating authority."

An ordinary majority suffices, however, for the election of officers of the caucus, and the nomination of candidates for office in the House.

[1] Even with this requirement, "it is interesting to note that the average attendance at the caucus of the Sixty-third Congress for consideration of important matters was 65% of the membership of the caucus; that therefore 132 votes (out of 291 members) was the normal two-thirds majority for controlling party policies; and that 16 southern states had exactly 132 Representatives." Haines, "The Congressional Caucus of To-day," in the *American Political Science Review,* November, 1915, p. 697, note. But Haines evidently overlooked the first proviso of the caucus rule.

Meetings of the Democratic caucus may be called by the Chairman, and shall be called by him at the request of the party leader, or "whenever requested in writing by 25 members of the caucus."[1] The Democrats meet in secret. But a journal of the proceedings is kept and published, on which the "yeas" and "nays" on any question must be entered at the desire of one-fifth of those present.

The Republican conference for a number of years threw open its doors to reporters. But its meetings became "field days," when speeches were made to the galleries and the country. For the better despatch of business, the Republicans went back to the secret conference when they regained control of the House in 1919.

Without a doubt, the secrecy of the proceedings strengthens the hands of the organization leaders. Publicity, the inducement to independent speech, is thereby taken away, while the threat of punishment remains. Independence is still occasionally rewarded with success, however, especially when it can show enough of a following to threaten the control of the leaders in either the caucus or the House. Mr. Nelson of Wisconsin gained a seat in the Committee on Rules after protesting in the conference of December 13, 1923 that the "progressives" were underrepresented on the committee slate which was then proposed. Similarly, two more members were added to the Republican Steering Committee as a result of the efforts of Representatives Reavis (Neb.) and Frear (Wis.) in the conference to organize the Sixty-seventh Congress. But as a rule, the program goes through in accordance with a schedule privately arranged beforehand.

The decisions of the caucus have rested lightly upon

[1] Rule 3.

participants at times, while in other periods, when the party spirit has been strong, the bonds of the caucus have held in line all but the most fractious members. Charles Sumner even in the days following the Civil War, when the Republican caucus reigned supreme, refused to abide by one of its decisions, limiting the business of a special session to reconstruction. He wanted Congress completely free to impose any needed check upon President Johnson. "No relations that I have with any political associates," he declared, "can absolve me from responsibility." But he was defeated in appealing his case on the floor of the Senate, July 5, 1867.[1] Sumner had announced in the caucus that he did not intend to be bound by its decision, but the announcement was not made until after he had been outvoted there by his colleagues. For carrying this warfare into the Senate chamber, Senator Fessenden publicly rebuked him. Sumner ought, he said, to have informed his Republican colleagues before the caucus vote that he did not intend to be bound by it, and he should then have refrained from voting in the caucus. To Sumner's defense, that there was no "code" of behavior in such matters, Senator Fessenden rejoined that such a code should be "of the heart."

The Democratic caucus has been more binding than the Republican in recent years. After the Cannon régime, the Republicans for a time gave up the caucus form of meeting, and substituted the conference, which was not strictly binding upon those who participated. In 1921, such a conference decided by a vote of 94 to 76 to support an increase in the size of the House by a new apportionment. When the proposal came before the House on October 14, however, it was defeated, despite the overwhelming Republican majority in

[1] *Congressional Globe*, 40-1, pp. 481-498.

Congress, because a number of dissenting Republicans did not abide by the decision of the conference. Previous to the Sixty-ninth Congress, the Republican party went back to the binding caucus system. A member is now expected to abide by the decision of the caucus, unless he is excused or fails to attend. Yet even if he breaks the bonds of caucus discipline, he is not thereby ruled out of the party, whereas "any member of the Democratic caucus failing to abide by the rules governing the same shall thereby automatically cease to be a member of the caucus." [1]

Some on general principle, and others, like Sumner, for specific cause, have resented the formulation of policy by any less than a majority of the whole House.[2] In 1915, Senator Norris, who had lately entered the upper chamber after a long experience in the House, spoke against caucus rule:

"I believe caucuses result in bad legislation. You can not, in my judgment, get as good legislation if you do it through a caucus binding men to vote for what they do not believe in, and keeping out other men because they do not happen to wear the party tag, and preclude them from taking any part in the consideration of the matter. . . . What we ought to have on any measure that comes up here is a meeting, without any political lines, of those who favor it, and let those who oppose it get together if they so desire." [3]

[1] Rule 2 of the Democratic caucus.

[2] Even in non-partisan movements, the caucus has sometimes been used to secure endorsement by a majority of the majority, when a majority of the whole membership could not be depended upon. Those working for the Eighteenth Amendment in New York State were successful, by means of the Republican caucus, in gaining ratification by the New York legislature, though they admitted that some of the Republicans, if left free, would have voted against ratification. ("The Inside Story of Prohibition Adoption," by Wayne B. Wheeler, *New York Times*, April 1, 1926.) The justification for such use of the caucus was that, since the vote of New York State was no longer needed to secure adoption of the amendment, the action of the Republicans showed an intention to line up their party within the state in harmony with the national position of the party, for enforcement of the Amendment.

[3] C. R. 63-3, pp. 3848 ff.; Feb. 16, 1915.

This would appear to be an ideal solution, except in regard to a measure which the party intends to make the chief issue of an election. A declaration of party policy on "paramount" issues helps to secure an intelligent verdict from the country. The successful party, too, with a definite mandate from the electorate, may well use the caucus to secure unity within its own ranks, in selecting the best method for carrying out the principles on which it stood. In such cases, it is desirable to make a frontal attack, and to stop all danger from the cross-fire of political friends.

One of the few examples of such a meeting as Senator Norris suggests, took place in 1893, when President Cleveland called Congress into extra session on August 7 to repeal the purchasing clause of the Sherman silver act. On the Saturday night preceding, there was a meeting of "silver" Representatives in the hall of the House, with 201 Members out of 359 attending. By the time the repeal came to a vote in the House, however, the number of Members opposing had dwindled to a minority of 101.[1]

The "farm bloc" of 1921 was formed to promote all legislation helpful to agriculture, while the organization of the "wets" in the Sixty-ninth Congress took in only those who were aggressively working for that cause. These groups were not formed merely to consider a single piece of pending legislation, nor were they composed of all Members who would favor such a bill.

In practice, non-partisan conferences on proposals which do not enter "into politics" seldom occur. Instead, very much the same result is attained when the leaders of the majority party act with due regard

[1] Champ Clark, in "My Quarter Century of American Politics," pp. 320-2 (1920), laid to "patronage," rather than the effects of the debate, this shift of so many votes to the President's side.

to the opinions of a majority of the Members, irrespective of party lines.

The caucus itself is the judge as to which measures are fit subjects for binding party action. The preamble to the Democratic caucus rules attempts to define the sphere of caucus action in broad terms, as follows:

> "a. In essentials of Democratic principles and doctrine, unity.
> b. In non-essentials, and in all things not involving fidelity to party principles, entire individual independence.
> c. Party alignment only upon matters of party faith or party policy.
> d. Friendly conference and, whenever reasonably possible, party coöperation."

It seems wise that more than a majority vote of the caucus should be necessary to invoke party authority on any measure. Unless partisans can reach more than 50 per cent agreement on a proposal, it could not involve a distinctively party principle. The Democratic requirement of two-thirds operates to squelch dissent within the party. It gives a saving sense of momentum to the movement for concerted action.

Even in matters which properly come within the sphere of the caucus, a Member sometimes finds himself as a party man compelled to subordinate his individual judgment. But Viscount Bryce, speaking of party regularity in the House of Commons, said: "Old Members have often told me that they had more often regretted votes given against their party under what they thought a sense of duty than those which they had, though with some doubt, given to support it." [1]

[1] "Modern Democracies," vol. I, p. 136 (1921).

CHAPTER II

THE FOUNDATION OF PARTY CONTROL

Upon the convening of Congress, the first business, after the roll-call by states,[1] is the election of a Speaker. The vote on the caucus nominee for Speaker has come to be the critical test of party allegiance.

The successful candidate is escorted to the Chair by the defeated minority candidate, who with a few gracious words presents him to the House. The Speaker-elect in reply states his conception of the duties of the office, and sometimes intimates what will be the attitude of the majority party toward minority Members in the work of the Congress. Champ Clark in 1917 bespoke a spirit of cooperation, irrespective of party, in the tasks of the war. [2] On the other hand, Mr. Longworth's comment [3] on the "unanimity" of his party's vote for him was held to refer to the fact that the 13 "LaFollette" Members, who had voted for Mr. Cooper for Speaker, had been denied a status within the Republican organization. The Member with the longest service in the House then administers the oath of office to the new Speaker, who in turn swears in the qualified Members.

The House next elects its Clerk, Sergeant at Arms,

[1] The Clerk of the preceding House, who presides until relieved by the new Speaker, makes up this roll of persons whose credentials show them to be duly elected in accordance with the laws of their respective states, or of the United States. But the House may question the *prima facie* force of the credentials (Hinds' *Precedents*, I, 592), and correct the Clerk's roll by striking off or adding thereto (*Ibid.*, I, 19-21).
[2] C. R. 65-1, p. 108; Apr. 2, 1917.
[3] C. R. 69-1, pp. 381-2; Dec. 7, 1925.

Doorkeeper, Postmaster, and Chaplain, ratifying the slate adopted by the majority party caucus and rejecting that of the minority. These officers are not Members, and, despite the manner of their election, are not partisan in the conduct of their duties. After the election of officers, the House notifies the Senate and the President that it is "ready to proceed to business."

But as a matter of fact, the organization is not complete until the adoption of rules and the election of committees. The former takes place on the same or the following day. But only the members of a few important committees, which must begin work immediately, are usually on the slate which is presented at this time.

It is doubtful whether this preliminary slate would be changed as a result of a Member's vote on the Speakership or on the rules. But there is no doubt that, with reference to the vast majority of assignments, the uncertainty of the situation acts as a strong inducement to party regularity on these first crucial votes. Particularly is this true with regard to a new Member, for while he is not likely to understand the importance of the vote on rules, he does know that his future career in Congress depends largely upon the kind of committee assignment which he gets. Old Members can look with a fair degree of certainty to reassignment to the committees on which they previously served, but the future of new Members is fatefully dependent upon first impressions.

Thus on the first day of the Sixty-ninth Congress, the Republican leaders desired to eliminate from the rules the discharge provision which had been inserted in the preceding Congress. The preliminary slate of committee nominations ready for presentation later in the day provided for only seven committees, of

which the important ones were Appropriations, Interstate and Foreign Commerce, Rules, and Ways and Means. The remaining 54 were not named until nine days later. As a consequence, on the question of adopting an extremely difficult discharge rule, no new Republican Member opposed, although 22 other Republicans voted against the rule.[1] This was despite the fact that the new Members, having least influence in party councils, would be most apt to desire some independent means of action. On the other hand, every new Democratic Member voted "nay" with his party leaders.

Although there have been times when one party or the other has had the whole committee list ready at the beginning of the Congress (the Republicans, for example, in 1919 and 1921), on other occasions it has been purposely delayed. The Sixty-first Congress, for example, met on March 15, 1909. On the following day, Speaker Cannon appointed the members of the Rules and the Ways and Means Committees, but he held up most of the appointments until August 5, the last day of the session, after the Payne-Aldrich tariff bill had passed the conference stage. Similarly Speaker Reed, in 1897, postponed his appointments until after the Dingley tariff had become law. These precedents were followed, in turn, by the Democrats in 1913, who did not name most of their committees until June 3, after the Underwood tariff bill had passed the House. The hope of good committee assignments was, of course, expected to keep Members "regular." The "Emergency" tariff act of 1921 was passed without resort to these tactics, undoubtedly because the huge Republican Membership then assured at least a majority in favor of the bill.

The process of organizing the House is of crucial

[1] Three new Republicans were recorded as "not voting."

significance. The power then conferred in the form of key positions, when backed by the rules, is hard to thwart. It is this fact which has prompted insurgency, whenever there was hope of success, to make its fight for change at the very outset. The effect of a deadlock is greatest when applied to the election of Speaker, as in the Sixty-eighth Congress, for this holds up all business in the House, hampers the Senate, and delays the President's message. In this case, while the organization of the House was incomplete, the Senate did nothing but adjourn. But when a three-party deadlock arose in December 1855 and continued until February 3rd of the following year, the Senate did proceed with such business as it could transact. It received petitions, elected officers and committees, passed a resolution referring a claim to the Court of Claims, and acted upon executive communications received from the President. In 1855, a Senate committee had informed the President that the Senate was ready for any executive message. But in 1923, during the deadlock in the House, Senator Lodge announced that the Senate had appointed its committee, which was evidently waiting for joint action with the House committee to inform the President that the Congress was organized.

The fight has sometimes been made upon the adoption of rules. But the "balance of power" tactics are less effective at this juncture, for the minority party is apt to have more in common with the desire of the majority to maintain the rules unchanged, than with its efforts for the election of the majority candidate for Speaker.[1] Thus, during the period of the

[1] On two occasions the House has chosen its Speaker by a plurality instead of majority vote (in the elections of Speakers Varnum in 1809 and Banks in 1855). But in recent years the House has not been disposed to take this means of breaking a deadlock, especially when, under the circumstances, a plurality vote might result in the selection of the minority party's candidate. In each of the two cases when a plurality was resorted to, the House by majority vote adopted a resolution declaring the result.

Democratic Congresses, the contest waged on rules was usually a sham battle between the Democratic Chairman of the Rules Committee, and the Republican Leader, Mr. Mann, who offered the one substitute motion which was permitted under the terms of the report.

The award of contested elections, in the early days of representative government, was a political question. The ministry of Walpole, first of the English "prime ministers," fell in 1742 when defeated in Parliament by 16 votes in the case of a petition relating to a disputed election. The American House, in the Congress which met in 1839, was placed under the control of a political minority, because five Representatives certified under the "broad seal" of the New Jersey Governor were not permitted to take part in the organization of the House.[1]

But in recent years, the dictates of fairness, and the desire to make an assembly represent its constituency as accurately as possible, have removed contested elections almost completely from the sphere of party politics. In the House of Commons, such decisions are referred, under the Contested Elections act of 1868, to the Court of King's Bench, for judicial determination. In the House of Representatives, they are referred to the three Elections Committees of the House, whose reports may be made at any time and have the right of immediate consideration. While political advantage has probably influenced some Members in voting upon these reports, there is a growing tendency on the part of the Committees and of the House to

[1] See Alexander, "History and Procedure of the House of Representatives," pp. 14-18 (1916).

deal with the merits of the cases, divorced from political bias. Mr. Hudspeth, minority member of Committee on Elections No. 1, with reference to that Committee's report on the Sirovich vs. Perlman case, April 15, 1926, said to the House:

"In the eight years I have served on Elections Committees and six years upon this Committee I have never seen partisanship creep into that Committee but one time. . . . When you took Tom Harrison's seat (Seventh Virginia) away from him you destroyed your organization in that district. You did violence to your conscience and thwarted the will of the electorate. . . . In this case, however, there has not been any partisanship, and there has not been any partisanship in the Committee since the distinguished gentleman from Utah became Chairman of that Committee. (Applause.) A Democrat was seated the last time over a Republican by this Committee, and every member of the Committee voted to seat that Democrat."

The chief abuse in recent years has been the delay in settling such contests. The committee in several instances did not report until the very end of Congress. Thus in the Harrison-Paul case, Judge Harrison retained his seat during 22 of the 24 months of the Congress. In these instances, practically full salary has been allowed both the successful and the defeated candidates.

Accordingly, at the time when other changes were made in the rules in January 1924, a provision [1] was added that "the several elections committees of the House shall make final report to the House in all contested-election cases not later than six months from the first day of the session of the Congress to which the contestee is elected except in a contest from the Territory of Alaska in which case the time shall not exceed nine months."

Because of the more definite election laws, contests have been on the decrease since the Congresses

[1] Clause 58, rule XI.

of the last century. According to Representative Luce, the five Houses from 1913 to 1923 averaged only about six each.[1] In the Sixty-ninth Congress, only four seats were contested. The report of Committee No. 3 was adopted on March 12, 1926; of Committee No. 1 on April 15; and the two reports of Committee No. 2 on June 15.

The standing committees of the House were appointed by the Speaker until 1911. Since then, they have been, in form at least, elected by the House. Rather the reverse of this development has taken place in the case of select and conference committees. Prior to 1880 the House could, and sometimes did, take away from the Speaker the selection of these committees. Under the rule adopted in that year, however (Cl. 2, rule X), this is no longer possible. Speaker Clark even ruled out of order a motion to instruct the Speaker as to the number and composition of a conference committee.[2]

Whether by the Speaker, however, or by the House at the instance of the Democratic members of Ways and Means and the Republican Committee on Committees, the selection of the Members to serve as committeemen is governed by party considerations, and circumscribed by rules of practice which make little difference in the result. These unwritten practices have to do with seniority, and with maintaining a just party ratio and a wide geographical distribution of the members within parties. They form no part of the official rules of the House, but are enforceable by the opinions of the opposition, and of interested Members within the party ranks.

[1] "Legislative Assemblies" (Science of Legislation series, Vol. II), p. 204 (1924).
[2] C. R. 63-2, p. 1316; Dec. 20, 1913.

Partisanship enters more actively into the selection of committees than, in the case of most of them, into any other phase of their activities. The majority and minority parties are represented according to a ratio which varies roughly with the relative strength of the parties in the House.[1] Thus the committees, once created, form miniature legislatures with a high degree of autonomy. It is clear that, for the life of a Congress, heredity plays a greater part than the influences of party environment in directing their activities.

The Democratic leaders in 1911, before consenting to the change from appointment to election by the House, undoubtedly felt assured that party managers would continue to play a dominant rôle in making up the committees. There had been a clear example in point during the preceding Congress. The bi-partisan combination which had worked the "Revolution of 1910," in barring the Speaker from his commanding position on the Rules Committee, also took away from him the power of selecting this Committee, and vested it in election by the House. But the nominations to the new Committee of ten were made in the caucuses of the two parties. All members of the former Committee of five, except, of course, the Speaker, were reelected. Mr. Dalzell, who had been Speaker Cannon's lieutenant, became Chairman. Republican insurgents, who had held the balance of power in the House, were helpless in the caucus, and unable to place a single representative on the new Committee.[2] The Cannon leaders themselves could not have chosen a better means to "divide and conquer."

[1] *Page's Congressional Handbook* (1913), compiled by William Tyler Page, Clerk of the House, gives, as typical, the ratio of majority and minority representation for a number of Congresses on the Ways and Means Committee.

[2] C. R. 61-1, p. 3759.

The Democrats in practice vested their members of the Committee on Ways and Means, as created by the caucus, with power to assign them to committees. This method was chosen in preference to a Committee on Committees, according to Alexander,[1] because of the fear that each member, in the case of a committee of the latter type, would appoint himself chairman of a great committee.

At first the Republicans, who were in the minority, authorized their leader, James R. Mann, to make nominations. These were submitted to the (Democratic) Chairman of the Committee on Ways and Means, who moved and secured the adoption of all committee assignments in the House.[2] In 1917, however, we find Mr. Mann, fortified by a new rule that a motion to elect members of committees should not be divisible,[3] making the minority nominations himself. There was a Republican Committee on Committees of 17 in the Sixty-fifth Congress.

When the Republicans returned to power in May 1919, this question pressed for a more permanent solution. The faction opposed to Mr. Mann secured the endorsement of Mr. Gillett for Speaker. It had also made arrangements in advance of the caucus for a small Committee on Committees, and the slate had already been agreed upon.[4] Mr. Mann, however, immediately upon moving that the selection of Mr. Gillett be made unanimous, retained the floor to propose a large Committee on Committees, composed of one Member from each state having Republican representation in Congress. Under this plan, which was adopted, each member has as many votes in the Committee as there are Republicans from his state. The

[1] "History and Procedure of the House of Representatives," p. 82.

[2] C. R. 62-1, p. 161.

[3] See *supra*, p. xiii.

[4] Brown, "The Leadership of Congress," p. 193 (1922).

caucus formally ratifies for membership on the Committee the Member nominated by each state delegation.

Irrespective of the merits or demerits of a Committee so constituted, it had the effect of giving the Mann faction control, because the majorities in the biggest state delegations selected Mann men to represent them. The states stood, as units, Gillett 20, Mann 12; while the votes in the Committee were Gillett 92, Mann 124.[1]

In addition to recommending the Republican members of the standing committees of the House, it is the duty of the Committee on Committees to nominate to the caucus a Steering Committee of seven members besides the Floor Leader, who is *ex officio* Chairman. It also recommends a Republican "Whip," with power to appoint assistants. After the House is once organized, moreover, the Committee on Committees recommends directly to the House, Republican members to fill vacancies on committees. The intermediate step of reference to a caucus for approval is dispensed with.

The parties have shown a delicacy about interfering with each other's committee nominations, especially since separate motions have come to be presented by the respective leaders. Speaker Cannon in the first three Congresses of his incumbency consulted with the minority leader about the assignment of minority Members. Regarding this practice, he himself afterwards said:

"It was well understood between Representative Williams and the then Speaker of the House that he should have his way about minority appointments, and as I recollect now there were not to exceed four cases where the minority leader did not have his way, and in those cases the limitation placed upon him was where the organization of the minority interfered with the organization of the majority for geographical reasons or as a matter of policy, and geographic reasons substantially made the exceptions."[1]

[1] *The Searchlight*, May, 1919, p. 4.

Asked whether he consulted with minority leader Champ Clark in the preceding Congress, he replied:

"Oh, in the Sixty-first Congress, that was the last, was it not? (Laughter.) The gentleman from Missouri (Mr. Clark), the leader then of the minority, notified me, if I recollect right, that he would not organize that minority unless his recommendations were accepted without the dotting of an 'i' or the crossing of a 't.' I declined to agree to that proposition because it conflicted with the policy that had been adopted by myself and by the House for the three former Congresses."

The Democrats assisted Mr. Cannon's recollection by stating that their caucus had nominated two men for the Ballinger-Pinchot investigation committee, and the Republicans had refused to approve either.

The real question at issue on the occasion of this debate was the proper course for the majority (then the Democrats) to pursue in case the minority could not agree among themselves. Representative Madison, a progressive Republican, had been elected at the beginning of the Congress as one of the minority members of the Committee on Rules. When his death caused a vacancy on that Committee, Mr. Mann, the Republican leader, in whose hands the caucus had put the power to fill vacancies, named Philip P. Campbell of Kansas. According to the practice then existing, Mr. Underwood, the Democratic leader, moved his election. But Mr. Norris of Nebraska, who had led the Republican insurgents against Speaker Cannon in the preceding Congress, nominated Victor Murdock of Kansas, a progressive and reformer of the rules. It was argued by some that under the circumstances the members of the Democratic majority should an-

[1] C. R. 62-2, p. 857; Jan. 11, 1912.

swer "present," and leave the Republicans to fight out their own battle. But Representatives Underwood and Henry stood in support of the Republican leader, and advised the Democrats to vote. Although, they reasoned, the Democratic party was in the last analysis responsible for committee personnel, the Democrats in caucus had recognized that the election of committees should be along party lines. "It is true," said Mr. Underwood, "that if one party, or one set of men, were so dictatorial, so unfair, and so unjust that they were not doing the fair and proper thing, or were putting bad men on committees, the majority of the House could break down party lines and elect their men, but that is not the case here."[1] Mr. Murdock was eliminated by a vote of 106 to 167, after which Mr. Campbell was elected without roll-call to the Committee of which, in due course, he became Chairman (1919-1923).

After returning to power, the Republicans by conference action made ten of the important committees "exclusive,"[2] following the example of the Democrats, who made twelve committees "exclusive" in the Sixty third Congress. The principle was laid down that no Member placed on one of these committees should serve on any other standing committee of the House.

[1] C. R. 62-2, p. 864; Jan. 11, 1912.

[2] These committees, the work on any one of which is considered sufficient to occupy a Congressman's time, are as follows: Ways and Means, Appropriations, Judiciary, Interstate and Foreign Commerce, Rivers and Harbors, Agriculture, Foreign Affairs, Military Affairs, Naval Affairs, and Post Office and Post Roads. Practical necessity at the beginning of the Sixty-fourth Congress first led Mr. Mann for the Republicans to give an "exclusive" status to these committees (except Foreign Affairs). As minority leader, he had 60 more Republicans to take care of than had been in the preceding House, while only 35 more committee places had been allotted him to fill. C. R. 64-1, p. 242; Dec. 14, 1915.

Note should be made that Rules is not an "exclusive" committee. Moreover, membership on an "exclusive" committee does not bar the same individual from being also a member of Rules.

In Congressman Garrett's motion of April 18, 1921 for the election of Democratic committeemen, two names were in violation of this principle. The Republican leaders objected, but the Democrats urged past service and other personal factors on behalf of these men. The Republicans then charged the Democrats with having determined, when in the majority, the selection of a Republican member of the Committee on Rules. But Mr. Garrett explained that this was at the beginning of the Sixty-fifth Congress, when the Committee was increased from eleven to twelve, and the Democrats placed on another Republican "in addition to the regular Republican list."[1] The two names under dispute were temporarily withdrawn, and before they were resubmitted on the next day, an agreement was reached by which the Republicans relaxed their rule to accommodate the Democrats.

Similarly five years later in the appointment of conferees on the Elliott Public Buildings bill, Speaker Longworth yielded to the wishes of the minority leader, and in effect recognized the right of the minority to be consulted regarding any change from the usual practice of appointing the ranking minority member of the House committee. Among the conferees named, the Speaker had apponted the third and fourth Democratic members of the Committee on Public Buildings and Grounds, for the reason that Mr. Lanham, ranking Democrat, had opposed the bill in the House. The Republican conferees had not been chosen, either, according to strict seniority. Nevertheless, spokesmen for the Democratic party insisted they should have been consulted. The Speaker was applauded when he withdrew the appointments, and later in the day, presumably after consultation, a dif-

[1] C. R. 67-1, p. 452.

ferent committee of conference was named, including Mr. Lanham.[1]

Within the party, the principle of seniority is now followed unless some obvious necessity justifies its violation. The outstanding exception in recent years has been the elevation of Mr. Madden to the Chairmanship of the Committee on Appropriations shortly after he had been placed on that Committee in anticipation of Chairman Good's retirement. Mr. Davis, on whom the succession lay, was considered too old to undertake the arduous duties of inaugurating the budget system, with an enlarged Committee on Appropriations. Accordingly, Mr. Madden was shifted from the Committee on the Post-Office and Post-Roads to the Committee on Appropriations at the beginning of the "short" session of the Sixty-sixth Congress, and became Chairman of the latter Committee in the Sixty-seventh Congress.

The Democrats gave the crowning honor of Chairmanship on Ways and Means to Claude Kitchin in the December session of 1915, although Representative Shackleford of Missouri stood next in line. But this position under the Democrats was combined with that of majority leader. Mr. Kitchin was preferred for party leadership.

Speaker Cannon in his day departed from seniority rather freely to promote his policies. Mr. Overstreet in 1903, and Mr. Tawney in 1905 were made Chairmen of Post-Office and Post-Roads, and Appropriations, respectively, when in each case two other members stood nearer the head of the Committee. Mr. Mann in 1909 was shunted to the Chairmanship of Interstate and Foreign Commerce, out of his turn, because important railroad legislation, afterwards known as the

[1] C. R. 69-1, pp. 8904, 8910-11, 8930; May 7, 1926.

Mann-Elkins act, was to come before that Committee. During the fateful debate of March 17, 1910 on the question of curbing the Speaker's powers, Representative Nelson cited as men who had felt punishment by demotion Messrs. Fowler of New Jersey (Chairman of the Committee on Banking and Currency in the preceding Congress), Cooper of Wisconsin, Norris of Nebraska, and Haugen of Iowa.[1] Mr. Cannon, taking the floor in defense of his régime, said that Mr. Fowler's Committee had refused to report the Emergency Currency bill, when large majorities in two Republican caucuses had expressed a wish for a favorable report. He charged that all four of these men whom he deprived of their normal rank in committee had failed to enter and abide by a Republican caucus.[2]

Congressman Haugen testified of the time when President Roosevelt was advocating the Meat Inspection act:

"I believe nine members of that Committee (on Agriculture) stood by the President. The other members of the Committee were against the legislation as outlined by the President, and so was the Speaker. What happened? In the next Congress when the time came for making up committees the names of seven of the nine members who had stood for the Roosevelt proposition did not appear on that Committee. The Chairman of that Committee on the morning after election found his political carcass outside of the breastworks. A new Chairman was appointed. According to the custom, the ranking member on the Committee, Mr. Henry of Connecticut, was entitled to the chairmanship, but Brother Henry had supported the meat-inspection bill, and his name did not appear on that Committee."[3]

[1] C. R. 61-2, p. 3304.

[2] C. R. 61-2, p. 3321. The reference was to the caucus preceding the organization of the Sixty-first Congress. These gentlemen had all (except Mr. Cooper) voted in the House for the caucus nominee for Speaker (Mr. Cannon), but they had failed to abide by the action of the caucus with regard to the rules.

[3] C. R. 61-2, p. 8422; June 17, 1910.

A journalist favorable to Speaker Cannon quotes him in an interview as replying as follows to the charge that he packed the committees:

> "They say," the Speaker echoed with scorn; "you mean Samuel Gompers says it. Two years ago when I made up the committees, Mr. Gompers came to me and demanded—demanded, I say—that he should be consulted as to the men proposed to be put on the Committees on Labor and Judiciary. I told Mr. Gompers that he would not be consulted, neither would I seek his advice nor take it. . . . I am willing to listen to any proper suggestion that may be made to me. . . . Gompers' grievance is not that I packed the committees; oh, no; he thinks he was badly treated because I wouldn't pack the committees as he wanted them packed."[1]

Nevertheless it cannot be denied that Speaker Cannon pursued a policy of his own. In naming conferees on the Payne-Aldrich tariff bill, for instance, he "passed over Mr. Hill of Connecticut, whose rank on the Committee on Ways and Means entitled him to a place on the conference committee, and Mr. Needham of California, both fair men, who would have faithfully represented the House bill, and put in their places Mr. Calderhead and Mr. Fordney, men whose aim in life is to keep the tariff up."[2] On the other hand, even Speaker Cannon did not go so far as to remove a committeeman in the middle of a Congress.

The seniority principle, which has gained in importance under the system of electing committees, is clearly not in support of strict party control. It is apt to break down the harmony of the party by making more difficult a line-up of all committees in accord with the policies of a small group of party mentors.

This impairment of central control is to a large extent lessened, however, by the workings of the system itself. It is a matter of common belief that most

[1] Low, "The Real Joseph G. Cannon," *Boston Globe*, May 2, 1909.
[2] Hale, "The Speaker or the People?" *World's Work*, April, 1910.

men grow more conservative, or at least more amenable to approved practices, the longer they remain in Congress. The power to put ideas into effect carries with it responsibilities which have made many men in many ages lay aside pet theories for the accomplishment of real results. Then, too, the Members who are regularly returned over a long period of years prove in most instances to be, in the case of Democrats, gentlemen from the "solid" South, and in the case of Republicans, Northerners from those "rock-ribbed" Republican districts which are orthodox in their party principles.[1]

In no section of the country does the custom of rotation in office survive, to vary the general rule that the longest service is by Members from districts which return the party most regularly. Rotation within the party was formerly the vogue. Lincoln, for example, after serving one term in Congress, gave up the seat as a matter of course to another Whig. Even Viscount Bryce, no doubt basing his observation on earlier facts, continued to state in his 1921 edition that the tendency to reelect Members was less strong in the West. "Out there," he wrote, "a seat is regarded as a good thing which ought to go round. . . . So far from its being a reason for reelecting a man that he has been a Member already, it was, and is still in parts of the West, a reason for passing him by, and giving somebody else a turn."[2] An actual tally by states and sections, however, in the three elections, 1922, 1924, and 1926, taking the number of districts which returned the same party, and the proportion of these in which the same individual was returned, fails to show any section in which rotation remains in vogue. The proportion is strikingly uniform through-

[1] See Table A, page 176.
[2] "American Commonwealth," p. 198 (1921 ed.).

out the country, representing approximately the minimum of casualties within a party.

Constituencies have come to see the advantage in having Representatives of experience. This change of attitude took place during the early 90s in Minnesota, if we may judge by the services of Representatives in Congress from that state. Totaling the lengths of service from the admission of Minnesota to the Union in 1858, we find that the average before 1893 was only 3.4 years, while since that date (not including uncompleted service of incumbents in the Seventieth Congress) 8.1 years has been the average individual service.

Party orthodoxy crowns the oldest heads rather more consistently among the Democrats than among the Republicans. Certain districts of the west central states which represent the extreme wing of the Republican party have shown a steady loyalty to Representatives of the "progressive" school.[1] But the very insurgency which would be a danger to regular Republican control of committees furnished the warrant for departing from the natural workings of seniority.

Those who ventured forth from the Republican fold were in each case upon their return placed at the bottom of their committee list. Thus in the Sixty-fifth Congress, Representative Schall of Minnesota was a Progressive member of the Committee on Rules, being taken care of by the Democratic leader, whose party was then in the majority. Mr. Schall returned to the Republican party before the next election. In the following Congress, he was placed not only below the Republicans who were already on the Committee, but likewise below the four who were just then newly

[1] Thus Henry Allen Cooper of Wisconsin has served 16 terms, a longer period, though not continuous, than any other Member of the Sixty-ninth Congress. Gilbert N. Haugen of Iowa has served 14 consecutive terms, being the third senior Member.

appointed. Representative Snell, on the other hand, who had entered the Committee at the same time as Mr. Schall, rose steadily in rank until in the Sixty-eighth Congress he became Chairman.

Again, the 13 who supported Mr. LaFollette in 1924 lost committee rank. In the words of Mr. Tilson, Republican leader in the Sixty-ninth Congress, those "who had voluntarily left us were not left upon those committees which we deemed to be decisive in party program matters." They had "voted for a different candidate and supported a different platform. . . . No test other than this was applied in the action of the Committee on Committees."[1] Accordingly, Mr. Haugen, who had remained within the party, kept his position as Chairman of the Committee on Agriculture, while Mr. Cooper, veteran Member of the House, was relegated to the lowest rank on the Committee on Foreign Affairs. Indeed he was allowed to remain at all on this important Committee merely because it was said he had not been so active as some others in his opposition to President Coolidge during the campaign. Mr. Browne, who had gone into New England and spoken for the Democratic local ticket there,[2] was taken off the Committee altogether. Similarly, Mr. Nelson was taken from the Committee on Rules. However, the insurgents were liberally taken care of by the Republicans at the bottom of less important committees.

Another variant of the general principle that length of service entitles to rank in committee springs from the requirement that the service must be continuous. If for any reason there is a break in the service of a Member, he loses whatever rank he has gained, and

[1] C. R. 69-1, p. 935; Dec. 16, 1925. Yet in the Senate, after much hesitation, the younger LaFollette was regularly assigned as a Republican.

[2] *New York Times*, Dec. 10, 1925.

upon his return to the House must begin again at the bottom of the committee list.

In this respect, the seniority principle strictly applied defeats its own purpose of basing promotion upon experience. Both Joseph G. Cannon and Nicholas Longworth failed of reelection in 1912. At the time, Mr. Cannon was ranking Republican member of the Committee on Appropriations, having previously been Chairman of that Committee for ten years, and a Member of the House for 38 years (1873-1891, 1893-1913). Nevertheless, after his reelection in 1914, though he returned to the same Committee, he was given rank no higher than that of the two Members who were then appointed to the Committee for the first time. Similarly Mr. Longworth, who had served in the House ten years and had gained a position on the Committee on Ways and Means before his defeat, was compelled to begin again at the bottom of that Committee after he was returned to Congress in 1914. His previous service did not avail even to give him preferment among the Members newly appointed to the Committee.

An old Member returning to the House is usually assigned to one of the more prominent committees. But the basis of his rank is consecutive service in the committee, not total service in the House. As a result, Mr. French of Idaho was outranked in the Sixty-ninth Congress by eight Republicans of the Committee on Appropriations, although six of them had smaller totals of service in the House. In like manner, Theodore E. Burton of Ohio, one of the most capable and respected men in Congress, whose first term began in 1889, ranked on the Committee on Rules below Chairman Snell, who did not enter Congress until 1915. Mr. Burton left the House in 1909 to serve a term in the Senate. There were two intervals during

his 11 terms of service in the House, and the "beginning of present service" was in 1921. He was not placed on Rules until 1923, whereas Mr. Snell had served continuously on that Committee since 1917.

All in all, however, the party leaders are pretty well satisfied to abide by the seniority principle. The Pennsylvania state legislature, which had adopted a Committee on Committees after the victory of Roosevelt in carrying that state in 1912, underwent a reaction, and in the following session restored to the Speaker his appointing power.[1] No similar tendency has shown itself in Congress. The House has accepted the principle of the Committee on Committees, in preference to one-man power. At the same time, however, it realizes that for so large a group of men to make a general reorganization of the committees for each Congress would be a delicate task for which it is ill fitted. The struggle to get chairmen of the proper views would make for dissension rather than contentment within the party. Log-rolling would be the result.

The rational alternative, if the seniority principle is maintained, is to have a workable rule for the discharge of committees. While seniority may result in an occasional inferior Member as chairman, it is the safer horn of the dilemma because the evils of a sluggish or perverse committee can be counteracted by a discharge motion.

Besides avoiding much agitation and uncertainty, seniority has certain positive advantages.[2] Mr. Laski states that "much of the strength of a chamber like

[1] Scott, "State Government in Pennsylvania," p. 17 (1917).

[2] Compare with rule 12 of the first United States Senate, which provided that the chairman of every committee "shall be the Senator of the most northerly state of those from whom (!) the committee are chosen." Journal of William Maclay, p. xiv.

the House of Commons has come from the fact that its leading figures have, over long years, been distinguished actors there." He cites Edmund Burke with a service of 30 years, Gladstone with 60, and Disraeli with 40. On the other hand, he attributes the lack of public esteem for other assemblies "to the fact that they are, so to say, almost new assemblies at each epoch of their renewed power,"[1] and calls the term of two years too short a time for a legislature "to translate a wide policy into statutes."[2] In the American House, much of the continuity which might be gained from a longer term is undoubtedly secured through the permanence of committee tenure and the stress laid upon length of service under the seniority principle.

Despite the large measure of security assured to individuals by this principle, attention should be called to the fact that party managers have a wide range of discretion in placing new Members. They can usually limit the industry of *personæ non gratæ* to the rather narrow activities of the less important committees. While it is often wise to give representation on all committees to various points of view within the party, men who are in harmony with the approved program of the leaders can be appointed in sufficient numbers to control the strategic committees. Occasionally, if this result cannot be obtained by the normal process, emergency measures are resorted to. Some trusted Member may be shifted to another committee and made chairman out of turn, as was done in the case of Mr. Madden,[3] the size of committees may be increased so that they can be "packed" with regulars, or a caucus rule, though general in application, making committees "exclusive" or barring the chairmen of committees from membership on the Rules Committee,[1] may deplete a key committee of independents. In general, once the House is organized and the rules are adopted, the party managers are in positions of vantage from which they can designate the major activities of the House for the life of the Congress.

[1] "A Grammar of Politics," p. 341 (London, 1925).
[2] *Ibid.*, p. 320.
[3] *Supra*, p. 48.

[1] See Chapter V, p. 92.

CHAPTER III

THE COMMITTEES

THE American committee system, as well as the modern English cabinet, is a natural development of earlier parliamentary practice. When the fathers of colonial legislatures left England, in fact, Parliament had shown some tendency toward a system of standing committees with specialized functions, such as that which has become the distinctive feature of Congress.[1] Similar committees arose in many colonial assemblies, notably in Virginia, Maryland, and Pennsylvania.[2]

The cabinet system, on the other hand, was a later growth, resulting from conditions which were only faintly reflected across the Atlantic. While the Restoration placed the Stuarts again on the throne, Parliament continued to assert its supremacy. Under Charles II, it used frequent impeachments as a means of holding the royal ministers in some measure responsible to itself. But after the Revolution of 1688, cabinet government began to take its modern form. The system of control by a committee of the majority in the House of Commons became firmly rooted in England during the following century, under a succession of foreign kings (the Hanoverians).

[1] For instances of standing committees in the reign of Queen Elizabeth, and their use in the "Long" and "Barebones" Parliaments, see Jameson, "Origin of the Standing Committee System in American Legislative Bodies," *Political Science Quarterly*, vol. IX, pp. 246-267. But Cromwell as Protector restored the four "grand" committees. These "grand" committees of the English type resemble the Committee of the Whole, rather than the standing committees of Congress.

[2] McConachie, "Congressional Committees," pp. 22-25 (1898).

The cabinet, in brief, was a "posture of defense" [1] against an irresponsible executive. No necessity called forth a similar development in the United States.

Something of the same tendency, to be sure, may be seen before the Revolution put an end to the rivalry between royal governors and the colonial assemblies. Small groups of Members formed to lead the assemblies, and to contest the governors' power.[2] Even under the *Constitution,* Gallatin used the Committee on Ways and Means to offset the initiative of Hamilton and his successors in money matters. But in the periods of greatest committee development, during the Continental Congress, and again under Speaker Clay after 1812, the executive, it so happened, was weak, and Congress increased its committees with an eye single to the dispatch of its growing business.

We are not here concerned with the opinions of such Englishmen as Lecky,[3] Marriott,[4] Webb,[5] Laski,[6] and Whitehouse,[7] that Parliament might to advantage make greater use of standing committees. It is enough to observe that insofar as committees are employed in both England and the United States, they tend to remove measures from the field of party politics. Indeed, only such bills as it is intended to consider in a non-controversial spirit are referred to one of the Commons' six large standing committees. A great party measure may, by vote of the House, be considered instead by the whole membership in Com-

[1] Harlow, "History of Legislative Methods in the Period before 1825," p. 119 (1917).

[2] Nevins, "American States during and after the Revolution," pp. 13-14 (1924).

[3] "Democracy and Liberty," I, p. 243 (1896).

[4] "The Power of the Purse," *Nineteenth Century*, Aug., 1917.

[5] "A Constitution for the Socialist Commonwealth of Great Britain," Pt. 2, ch. I, esp. note to p. 117, and p. 120 (London, 1920).

[6] "Grammar of Politics," p. 353 (London, 1925).

[7] "Constitutional Systems of England and the United States," *Contemporary Review*, Oct., 1926.

mittee of the Whole. All money bills are likewise handled in Committee of the Whole House.[1] The result is that party lines are more loosely drawn in the English committees than in the House itself.

Despite the straight party basis on which the committees of the House of Representatives are formed, they too act as non-partisan agencies of reference. To this statement, there are two conspicuous exceptions. Rules is a so-called "political" committee, although even there the party lines are often broken; and Ways and Means handles the measures, like taxation and the tariff, which touch the pocketbook of the country.

The former Committee has two types of functions derived from that of making rules. Its power to give priority to reports of the other committees affects bills which are before the House itself, and will therefore be discussed in Chapter V. It controls, besides, the creation of special and investigating committees, which usually are more aggressive than the standing committees of the House. A conspicuous example is Thaddeus Stevens' joint committee on reconstruction after the Civil War, which developed a radical plan for dealing with the South, to supplant President Johnson's conciliatory measures. There is, to be sure, the type of select committee which is intended to take matters out of politics, as, for example, the Select Committee on the Budget in the Sixty-sixth and Sixty-seventh Congresses, and the Joint Committee on Muscle Shoals, established in the Sixty-ninth Congress. But special committees, created for an unusual purpose, are apt to be keenly alive to the possibility of making political capital. This is particularly true of investigating committees, whose disclousres may be of sensational interest to the country. A special committee to investigate the conduct of elections in Kansas

[1] Ilbert, "Parliament," pp. 70 ff. 1911).

was created in the House organized under Speaker Banks, after the memorable contest of 1855-56. The composition of this committee (two northerners and one Missourian) determined the nature of the report, which "proved a sensational campaign document for the Republicans" in the election of 1856.[1]

In the case of proposed committees to investigate the administrative departments, the partisanship of the Rules Committee is most often shown by smothering the resolution, unless, of course, the President and the House are of different political parties. If the Committee is bolder, however, it may make an adverse report, then bring party pressure to bear in a "whitewashing" process by vote of the House.[2]

The Republican members of the Committee on Ways and Means commonly prepare a tariff bill without the presence of the Democrats. In like manner the Democrats of the Committee, when they composed the majority, worked independently of their Republican colleagues. During the World War, "politics" in most matters were adjourned; but the Democratic members of this Committee, meeting to consider tax schedules, looked askance when the Republicans appeared in the door. They did not come again.

It was thus a case of the pot calling the kettle black when on February 17, 1922 Representative Garner of Texas, a member of the then Democratic minority, charged that the Republicans of the Committee had lately held a separate session, at which a representative of the American Legion was heard on the pending

[1] Smith, "Parties and Slavery," p. 168 (*American Nation Series*, 1906).

[2] Such tactics were used in 1923 by the Committee on Judiciary, handling a resolution for the impeachment of Attorney General Daugherty. An adverse report is usually allowed to lie on the table,—unless within three days some Member asks that it be put on the calendar. In this case, Chairman Volstead asked that it go on the calendar, with the evident purpose of "whitewashing" Mr. Daugherty. (C. R. 67-4, p. 2449.)

bonus bill. Mr. Fordney, Republican Chairman, countered by recalling that the Democratic members, when making up the Underwood tariff, had called in a man from New York to give them information on lemons, and that they took his advice. It was customary, he declared, to have "Treasury experts and other officials before the Committee when the majority members of the Committee were considering the making of rates in a revenue bill." On behalf of the majority he took full responsibility for the pending bill, saying:

"The Republican Members of this House will pass a bonus bill. That is what we will do, but will give gentlemen on the Democratic side of this House a chance to vote for or against that bill. We are using every effort to prepare that bill so that when it is presented to the House the Republican Members of the House will agree with the Committee." [1]

More recently the Democrats as minority members of Ways and Means met separately, and prepared a tax cut bill, which Mr. Garner introduced on December 8, 1926. This bill was promptly pigeonholed by the full Committee, "by a strict party vote." [2]

It will thus be seen that the hostile comment of Bagehot (1826-1877) on the American committee system is less true to-day in respect of taxes, the particular subject of his illustration, than of any other class of business. "When the taxes do not yield as they are expected to yield," he queried, "who is responsible? Very likely the Secretary of the Treasury could not persuade the chairman—very likely the chairman could not persuade his committee—very likely the committee could not persuade the assembly. Whom, then, can you punish—whom can you abolish—when your taxes run short?" [3]

[1] C. R. 67-2, pp. 2715-16.
[2] See statement by Mr. Garrett, C. R. 69-2, p. 2171 unbound; Jan. 24, 1927.
[3] "English Constitution," p. 86 (1924 ed.).

His innuendo takes no account of party. Mr. Mellon, it is true, found it expedient to put forward his more recent tax proposals as "non-partisan," Nevertheless, party is coming more and more to make public profession of its financial faith. It is held accountable, willynilly, for its stewardship in money matters.

In the remaining 59 of the 61 standing committees, members think party politics, perhaps, and they talk politics, but they vote upon a given measure according to its effect upon their own district, state, or section. Bentley's conception of the legislative process as "the play of group interests . . ., or give and take," is perhaps less sordidly true of committee action than of votes in the House itself. Nevertheless, there must be "compromise, not in the abstract moral form, which philosophers can sagely discuss, but in the practical form with which every legislator who gets results through government is acquainted." [1] "The adjustment of interests" is studied in Congressional committees as a problem in economics and sociology, seldom to be approached with motives of partisan advantage.

Political parties to all appearances consent to stand aloof, for the very discreet reason that they can find no solid leverage for pressure upon the committees. The seniority principle, as we have seen, frees members of a committee from fear of demotion. Of course, a party might caucus upon a bill while it was yet in committee. But this is seldom done. Committeemen who are not amenable to the private advice of party leaders will not be much more apt to act at the command of a mere majority of the caucus. In case of complete estrangement, it is possible, as we shall see, for the majority party with majority support in the

[1] "The Process of Government," pp. 370-1 (1908).

House to take a bill out of the hands of a committee. But a bill thus made a party issue would lose the support of minority Members, while sympathy with the committee would be sure to cut into the ranks of the majority. A party is seldom sufficiently numerous, and at the same time disciplined and cohesive enough, to do this.

Executive patronage may in extreme cases be withdrawn. But this weapon is less effective than against Senators. Representatives are normally not given the degree of control that is accorded Senators in naming important federal office-holders in their states.

Nor does the Floor Leader often go in person before a committee. An instance of this kind took place in the Sixty-seventh Congress, provoking Mr. Aswell (Dem.) of Louisiana to raise a protest on the floor of the House. Republican leader Mondell, he alleged, had let it be known that he would like to appear before the Committee on Agriculture. Concerning Mr. Mondell's counsel to the Committee to defeat certain agricultural relief measures, Mr. Aswell cynically remarked:

"I do not know with what authority the gentleman from Wyoming came to that Committee. He appeared to have commanding authority, but I do not know whether his authority was from the White House, authority from Dr. Fess, Republican Chairman of the Congressional Committee, or authority from the millionaire Steering Committee, or authority from the organization of his party." [1]

But in a tactful, informal way, the Floor Leader frequently feels the pulse of the committees, and prescribes wise rules of conduct. At a time when the Republican leaders were cooperating with President Coolidge in an economy program, the Committee on World War Veterans' Legislation reported a bill to amend the World War Veterans' act of 1924. The

[1] C. R. 67-2, pp. 3506-7; Mch. 7, 1922.

minority report upon this bill sheds light upon the forces which had been brought to bear in molding it into form. According to this report, the Committee was three times informed by the Republican leaders that the bill could not be enacted unless certain provisions were changed "which conflicted with the President's so-called economy program." The Committee each time had reconsidered, and the majority had conformed to the wishes of the administration.[1]

Leadership can sometimes exert an influence too through referring a bill to a committee favorable to its enactment, when the subject-matter of the bill lies on the border-line between the jurisdictions of two or more committees. Thus the passage of the Oleomargarine Tax bill in 1902 was secured through its reference to the Committee on Agriculture, which was favorable to it, instead of the Committee on Ways and Means, which in the past had failed to act upon it. Similarly, the leaders on the Republican side tried to pass a bill ending free school facilities in the District of Columbia for 3,000 children who came over the Maryland and Virginia lines. A legislative rider was offered to the District of Columbia appropriation bill, because it would have been embarrassing to Mr. Zihlman, Chairman of the District Committee, whose Maryland constituency bordered on the District, if the proposed bill had taken the regular course of reference to his Committee.[2]

Some committees pride themselves upon being studiously non-partisan. Such a committee is Claims, of which Chairman Underhill boasts that "the Committee never questions which side of the aisle a man sits

[1] C. R. 69-1, p. 9556; May 17, 1926.
[2] See C. R. 69-1; Mch. 18, 1926, when the proposal was defeated, despite these discrete methods aimed to secure its adoption.

on or what party he belongs to" when he introduces a claim.[1] Up to that time, 183 bills had been "introduced for" Republicans, and 157 for Democrats, which was very nearly the proportion of the two parties in the House. Elections Committees likewise prize the judicial spirit. Even the Committee on Interstate and Foreign Commerce, which was discharged from consideration of the Howell-Barkley bill (see Chapter VIII), was afterwards called unpartisan by Mr. Barkley himself, who was a Democratic member of the Committee. Speaking at the time of Chairman Winslow's retirement from Congress, he said:

"He and I have differed sometimes on fundamental questions; but it is the pride of that Committee that it has never divided along party lines. There has never been a vote in the Committee on Interstate and Foreign Commerce that was partisan."[2]

Even when there is no partisan issue, however, the presence of committeemen who belong to the opposition has a beneficial effect. It makes for closer scrutiny of legislation. In England, the minority even though it be the Labor Party speaks proudly of its function as "His Majesty's Opposition." A member of the minority in Congress can do what might injure the party standing of a majority member. A capable critic in the ranks of the opposition is honored by his own party and respected by the majority. But a contest of factions within a party, whether in local politics or in Congress, usually engenders enmities that are real. It is possible to differ less disagreeably with a man who belongs to another political party than with one who belongs to your own.

[1] C. R. 69-1, p. 7526; Apr. 15, 1926.
[2] C. R. 68-2, p. 5620; Mch. 4, 1925.

CHAPTER IV

THE SELECTIVE FUNCTION

It seems paradoxical to say that the most important activity of committees is inactivity. This is, however, the case if by activity we refer to the process of killing off the vast majority of bills by inaction.

On the first day alone of the Sixty-ninth Congress, 808 public bills were introduced, and 3205 private bills. The Public Printer reported the greatest pre-session printing of bills in history.[1] Within the first week these numbers had reached 1216 and 4127 respectively, and were supplemented at the average rate of about 50 public and 100 private bills daily for a month thereafter.

There is absolutely no limit nor control to a Member's liberty in the matter of introducing bills. Mr. Berger, the Socialist Member, is free to, and does, have bills pending to apply socialistic doctrines to the solution of our economic problems.[2] In the early days of the government, a subject was referred to a committee only after it had been approved in principle by the House, very much as in England at the present

[1] The Clerk of the House had written Members to send their bills along so that they might be printed during the recess. The total numbers of bills introduced on other first days were:

Sixty-sixth Congress	1035
Sixty-seventh Congress	2157
Sixth-eighth Congress	2656

[2] His speech in the House on April 28, 1926, explains some of his less radical proposals.

time bills are referred only after they have been discussed and passed on second reading. But in the House of Representatives, no word need now be uttered in defense of a bill to secure its introduction and printing at public expense.

As a consequence, the easiest way to end the importunities of a constituent pressing some shady private claim, or of a persistent lobbyist riding some strange hobby of proposed legislation, is to introduce a bill. The Member need only slip it in the box at the Clerk's desk and rest assured that the good judgment of the committee will protect him from having to defend it upon the floor. Of course, the conscientious Member should stand back of his proposals. But there are many matters of uncertain merit, which he may think it good politics to advance as far as the committee stage. If ardent constituents must be turned away empty-handed it is safer that the onus of rejection should fall upon a committee than upon their Representative.

When the earlier machinery broke down, such as "leave to introduce," which had been used for the purpose of scrutinizing bills, the selective function of the committees gained in importance. As late as 1851-2, McConachie tells us, there were nine or more instances of action upon bills without commitment.[1] But now every bill must run the gauntlet of the committee stage. Upon introduction, it is given a number, which, with the title, is printed in the Record. The bill is automatically referred by the Speaker to the appropriate committee.

Thus far, it is a neutral process. Discrimination first comes into play at the hands of the committee. A bill brings with it no recommendation for action from either the party or the House.

[1] "Congressional Committees," p. 117 (1898).

Party responsibility in the United States thus acts, on the negative side, by a process of indirection; while in England, it must be admitted, the Cabinet gives its verdict in a more straightforward manner upon proposals for new legislation. This is possible from the fact that in England party works through the official machinery of government, assuming an initative in legislation, while in the United States party works behind the scenes, leaving the individual Member nominally free to propose action.

The latter method has, however, its advantages. It allows a wider range of investigation than the English system.[1] There is no limit to discussion in committee, as there would be in the House, for it has been found impracticable to apply the previous question to committee discussion. It is perhaps wise, too, that party leaders should not be called upon to take a stand until such investigation is had, for, once they have committed themselves in favor or against a measure, it is extremely doubtful that any facts which the committee might bring to light, short of the most radical disclosures, would avail to reverse their position. No man or organization of men likes to make an admission of error.

Touching any proposal of new legislation in so diverse a country as the United States, there are a multitude of technical problems. A committee facilitates the use of experts. It forms a means of communicating with the executive departments, and may call technical officials or members of the cabinet before it.

[1] A French writer, from the viewpoint of one used to the parliamentary form of government, came to recognize points of advantage in the selective function of American committees: "Peut-être aussi la procédure est-elle abregée et la Chambre peut-elle, après suppression des projets sans valeur, élaborer plus rapidement ceux qui lui sont rapportés; cet avantage est considérable si l'on établit la comparaison avec le système anglais." Bigaud, "Les commissions parlementaires en France, en Angleterre et aux États-Unis," p. 121 (Toulouse, 1920).

Drafting experts of the Legislative Counsel are available to perfect the form of the bill, to delve into the constitutional problems which it involves, and to provide material for the report. The committee system had the advantages of high specialization.

While a committee is subject to human frailties, it ought to be in a better position than an individual Member to gauge the real sentiment of the country. A flood of letters may appear to a Congressman to represent the demand of a popular majority when it is merely the propaganda of a well-organized minority. Thus on May 6, 1926, Chairman Reed of the Committee on Education warned the Members against taking too seriously such a propaganda on behalf of the bill for a Federal Department of Education. Such a bill was before his Committee. "It is evident," he said, "that the news reports (a false rumor that the Committee had voted to kill the bill) would cause no concern to those who are opposed to the bill, and it can be taken for granted that they will not write to their Representatives asking for an explanation. It is quite certain, however, unless this news item is explained at this time that the Members of this House will receive a flood of letters from the large number of national organizations in favor of the bill." Mr. Reed, though himself the proponent of the measure, felt that Members were apt to gain a wrong impression that the country was impatient with the Committee and wanted immediate action.

The committee provides on each subject under consideration that focal point which Fisher Ames sighed for the lack of in the Fourth Congress. "We are a mere militia," he wrote. "There is no leader, no *point de ralliément*. The motion-makers start up with projects of ill-considered taxes, and, by presenting many

and improper subjects, the alarm to popular feelings is rashly augmented."[1]

The influence of a strong party leadership upon the selective function of committees can be gauged only by comparison with other legislatures. After a study of conditions in the states 20 years ago, Professor Reinsch set down the principle that "it is in the states in which the political organization is strong that the percentage of bills smothered in committee is large."[2]

Facts still continue to bear out this conclusion. There is undoubtedly a connection between the fact of notoriously weak party responsibility in most of the state legislatures, and the cowardice of the committees in exercising their veto. Thus, in Nebraska, "it is said that committees prefer ordinarily to send important bills out to the House rather than to take the responsibility for killing them."[3] As a result, the general file, or House calendar, became practically useless.[4] In Texas, where party opposition is at a low ebb, "it has been quite common . . . for committees to yield to pleas to 'Report the bill out; give it a chance in the House (or Senate); you can reserve the right to vote against it.' Committee work is largely perfunctory."[5] In Illinois, on the other hand, where the strength of two parties is more nearly balanced, there was, for a period of years, an average of about 30% of bills referred which did not issue again from committee.[6]

[1] Works, I, 214.
[2] "American Legislatures and Legislative Methods," p. 169 (1907).
[3] Boots, article on Nebraska in the series, "Our Legislative Mills," *National Municipal Review*, v. XIII, p. 113 (1924).
[4] Report of the Joint Committee on Reform of Legislative Procedure in Nebraska (1913).
[5] Finty, article on Texas in the series, "Our Legislative Mills," *Nat. Mun. Rev.*, v. XII, p. 652.
[6] Reinsch, *op. cit.*

But even this proportion is small when compared with the number of proposals which die in committees of the House of Representatives. Of all bills and resolutions introduced there in the Sixty-sixth Congress, 73% failed to get beyond the committee stage. A similar fate befell 78% in the Sixty-seventh Congress, 64% in the Sixty-eighth, and 55% in the Sixty-ninth. These figures include the several thousand private bills which were usually combined in from 8 to 22 omnibus pension bills, while the number of the latter is subtracted from the totals both of bills and of reports. Recourse to these omnibus bills became general with the Sixtieth Congress, so that in the official figures there is a precipitate decline about that time in the number of committee reports.

When proper adjustments have been made, the ratio of reports to total bills introduced has maintained a fairly constant average since 1890. This is true despite the fact that the number of bills proposed pyramided rapidly until it reached the peak of 33,015 in the Sixty-first Congress. Since that time, contrary to the general impression, the number has fallen in each succeeding Congress until the Sixty-eighth, when the total stood at 12,474.[1]

The swollen totals at the time when the Progressive movement was germinating may have reflected the widespread political unrest. The three and even four sessions of the Sixty-first and following Congresses, too, naturally lengthened the open season for legislative proposals. The subsequent decrease is largely due, however, to general pension acts and to legislation giving executive departments and the courts jurisdiction to settle more and more claims of the types which used to form the subjects of special bills.

A movement is on foot to extend further the classes

[1] It ricocheted again to 17,415 in the Sixty-ninth Congress.

of claims which these authorities can adjudicate. Even yet (1925-1927), each Representative introduces on the average 42 bills and resolutions, each Senator 67, per Congress. The greater part of these measures relate to private or special interests, and needlessly distract Congress from its chief business of legislating for the general welfare. Justice to the claimants themselves can be meted out more evenly by agencies authorized to decide in a purely judicial spirit, or to apply general principles laid down by Congress. At present, each claim must take a precarious chance in the rough and tumble struggle through both House and Senate.

The party leaders concern themselves with few bills as far back as the committee stage. Indeed, the real achievements of a Congress have to do with the passage or the suppression of a mere handful of measures. The Congress elected in 1912, though unusually fruitful in important legislation, enacted fewer public laws than either its predecessor or its successor. Like ripples on the surface of the sea, many minor enactments may indicate a condition of relative calm.

Occasionally, however, a committee shields the leaders from embarrassment which would come to them if a bill were reported, and then neglected on the calendar. At other times, if a powerful group or section of the country becomes aroused in support of a measure, to stifle it altogether in committee would be unwise. The same result may be achieved, not by failing to report at all, but by reporting late with the expectation that the bill will be caught in either the House or Senate in the final jam.

It was charged[1] that the latter means of killing agricultural relief legislation was being resorted to in the spring of 1926. As a result, the Committee on

[1] By Representative Cannon of Missouri, C. R. 69-1, p. 7531; Apr. 15, 1926.

Agriculture, which could not find a majority of its members to agree on any one bill, neglected its selective function by reporting three diverse bills for debate by the House. The movement for some such legislation was so strong in the Middle West that the Republican leaders sponsored a rule of unprecedented character to allow the discussion of all three bills at the same time. Members found, however, after weeks of debate, that this attempt to untie the Gordian knot was as futile as discussion in the Committee itself, simply bringing clumsier fingers to the task. The House could not agree to pass any one bill. It defeated the Haugen plan, and sponsors of the other bills cooperated with the leaders to recommit the whole subject to the hands of the Committee. (May 21, 1926.)

It is rather difficult to determine precisely to what extent the reports of the committees become the will of the House. Even though we knew the number of favorable reports which were adopted, and the adverse reports which were rejected by the House, we should have no index to the relative importance of the bills or of the amendments made. Some committees, to all intent and purposes, are allowed to legislate for the House, while the work of others, such as Ways and Means, is carefully scrutinized.

In the former class belongs the Committee on Claims, which reported 109 House bills and 78 Senate bills in the Sixty-eighth Congress. 160 of these became law. The selective function of this Committee is greater than that of the corresponding committee in the Senate, for the House Committee divides its business among its members, who look into the merits of the claims. In fact, the more the House merely registers committee action on such matters, the greater

amount of time and energy will remain for concentration on really national problems.

The figures compiled by Mr. Thompson, Law Librarian of Congress, concerning the number of reports by each committee and the laws resulting in the Sixty-second Congress, show that the committees which received the most uniform endorsement by the House were: Appropriations, Public Lands, the Census, Interstate and Foreign Commerce, Rivers and Harbors, Public Buildings and Grounds, Judiciary, Military Affairs, Foreign Affairs, Indian Affairs, and Invalid Pensions.[1]

We can more readily discover the extent to which the committees govern what the House shall consider. It has taken their advice increasingly in this regard. In the Sixty-fifth Congress, 52% of all committee reports were acted upon by the House; 71% in the following Congress; 81% in the Sixty-seventh; 84% in the Sixty-eighth; and 91% in the Sixty-ninth Congress.[2] The number of public laws enacted has shown a slight tendency to increase in the last few Congresses, despite the fact that there have been fewer proposals introduced.[3]

One important clue to changed conditions is found in the growth of so-called "administration" bills. The-

[1] "An Analysis of the Present Methods of Congressional Procedure," *Proceedings of the Am. Polit. Sci. Ass.*, v. X, p. 168.

[2] Even a higher endorsement of committee selection was noted in New York State by Colvin, "The Bicameral Principle in the New York Legislature," pp. 87-88 (1913). He says that "the House as a whole seems to be depending more and more on the judgment of the committees. In 1910 in the Assembly 93%, and in the Senate 94%, of the bills reported by the committees passed."

[3] For totals of public and private laws enacted in each Congress, see a table prepared by the Legislative Reference Bureau of the Library of Congress, and inserted in the *Record* by Representative Ramseyer, C. R. 68-2, p. 5606. The final Calendar and History of Legislation, issued after each session by Mr. Eugene F. Sharkoff, Tally Clerk, also contains much useful information,—particularly the issues beginning with and subsequent to the Sixty-sixth Congress.

oretically, all bills have an equal chance. But as a matter of fact, certain bills introduced by Members who are known to be "on the inside," and to act at the instigation of administrative chiefs or with the approval of the President, are given the right of way. When the executive and Congress are of the same party, there is a marked increase of this liaison work by the party leaders. In the more technical services, in fact, the initiative is beginning to come frankly from the departments. Thus on the first day of the Sixty-ninth Congress, 12 executive communications were received, being letters from the Secretary of the Navy or the Secretary of War, "transmitting a draft of proposed legislation" on some subject connected with the service. These requests generally are honored by the committees.

A committee of able Members is, in turn, a wholesome check upon the department. The informal exchange of views serves to soften the conflict of administrative policy with the legislative will. On the other hand, legislation sometimes becomes tempered before passage, lessening the need for a Presidential veto, which is usually damaging to party harmony.

The committee which articulates most closely with the executive is Appropriations. That it might do so, jurisdiction over all appropriating measures was given to it and its sub-committees in 1920, and the present Budget law was signed by President Harding on June 10, 1921. General Charles G. Dawes became the first Director of the Bureau of the Budget, responsible as such directly to the President.

In no respect is the House more "in leading strings" than in the spending of money. It is wise on the whole that it should be so. During the 35 years when seven of the great appropriation bills were distributed to as

many legislative committees, responsibility was divided and extravagance was widespread. Mr. Fields, a Democratic member of the Military Affairs Committee during the World War, afterwards stated that in many instances before one dollar was spent of the money that his Committee considered sufficient, the Army officials "went before the Committee on Appropriations with a so-called deficiency and got additional funds there for the identical items for which we had appropriated."[1]

So active a reformer as Mr. Charles McCarthy had been convinced that the budget system "belongs in a responsible cabinet government, and not in a government such as ours." Under the former system, he felt, the administration stands or falls on the question of adopting the budget, and consequently the party members are easily "whipped into line" to support the estimates.[2]

Yet the post-war necessity for retrenchment has done the trick, too, in the United States, and the Budget is an assured success. In bringing about this result the cohesive force of party has played a helpful rôle. It nurtured and now promotes the spirit of cooperation between the executive and Congress.

Even now there is nothing in the rules of the House to prevent the insertion of new items not included in the Budget, provided they have previously been authorized by law.[3] The House of Commons, in contrast, for 200 years has had a rule that it would receive

[1] C. R. 66-2, p. 8118; June 1, 1920.
[2] Cited by Representative Fitzgerald, C. R. 63-1, p. 2162; June 24, 1913.
[3] The Public Buildings act of 1926, however, does limit Congress to executive figures as a maximum. The act provides that the Secretary of the Treasury "shall make an annual report to Congress containing a statement of the location of all public buildings which he and the Postmaster General (where his department is involved) deem necessary . . . together with a limit of cost. . . . " "The act making said appropriations may provide for" buildings recommended in the Budget estimates or in the report of the Secretary of the Treasury. But to such recom-

no petition for a charge on the public revenue, unless recommended by the Crown. Similarly, the constitution of the Confederate States of America [1] prohibited their Congress from appropriating money "except by a vote of two-thirds of both Houses, unless it be asked by the head of a department and submitted by the President, or be asked for the payment of its own expenses, or of claims against the Confederacy declared by a judicial tribunal to be just."

But although the House of Representatives is free in this regard, it has shown, on the whole, a becoming restraint. The policy of the Committee on Appropriations at first was to consider the Budget estimates as a maximum.[2] Subsequently, in the practice of "constructive economy," it has scrutinized the items closely, increasing some and lowering many. Congress did, in fact, pare down the Budget figures on the average almost $10,000,000 below the estimates in each of the first five normal years after the system went into effect.[3] The main transgressions have been with reference to rivers and harbors (especially the fiscal year 1923). But this is a chronic weakness of Congress, and is more than offset by other economies.

mendations the Committee and the House are in effect limited, since a point of order would lie against any other item.

Mr. Lanham, a dissenting Democrat, said concerning the effect of this change: "I think 'Ichabod' is written over the door of the Committee on Public Buildings and Grounds—that the glory of the House has departed." C. R. 69-1, p. 9644; May 18, 1926.

[1] Art I, sec. 9.

[2] Chairman Madden inserted in the *Record* on June 30, 1922, and at the close of succeeding sessions, detailed summaries of appropriations for each session. An accompanying report is usually inserted by the ranking Democratic member of the Committee.

[3] The aggregate cut (including the "short" session of the Sixty-ninth Congress) was $46,371,282.61. The decrease of $312,361,792.27 in the first year under the Budget (not added to the former total) was due largely to reduction of the Naval establishment after the Washington Conference, and to the fact that other wartime activities were restricted after the estimates were made.

The fabric of finance is so woven together that to break one thread is often to endanger the whole texture. Before 1860, appropriation bills were frequently put through by a device which gave the House no time for amending the committee draft. "Immediately upon getting into the Committee (of the Whole), a spokesman of the majority would propose to strike out the enacting clause of the measure. This amendment, not being itself amendable, would be passed with two five-minute speeches; the Committee would rise and report to the House, which would disagree to the striking out, and, ordering the previous question, put the bill through with a rush." [1] Such a device is no longer possible, for under the present practice the bill would have to go back to Committee of the Whole to have its decapitated head restored.

Appropriation bills do nevertheless go through the House almost as framed, for lack of information leads most Members to defer to the judgment of the Committee. Even in 1916, when appropriation bills totaling nearly a billion dollars were reported by the committees, the House made changes amounting to less than five millions in all.[2]

The general debate, not relating to any particular item, is apt to touch upon every conceivable subject except the bill itself. It is in the amendment stage under the rule allowing five minutes to a side that the items of the bill really come under surveillance. In the Sixty-sixth Congress, Mr. Madden gave to the House some figures [3] as a result of which he declared that the time spent in general debate was decreasing, while that under the five-minute rule was increasing. This was just before the adoption of the Budget system.

[1] McConachie, "Congressional Committees," p. 105 (1898).

[2] Munro, "Government of the United States," p. 305 (1919 ed.).

[3] C. R. 66-1, p. 1139.

A computation of the time spent under the five-minute rule on similar appropriation bills in the Sixty-ninth Congress would seem to indicate that the opposite tendency has since set in. Though certain items still provoke debate, these are in most instances the attempts to legislate on appropriation bills.[1] The actual supply items go through largely as written by the subcommittees of Appropriations, in harmony with the Budget, although the debate on appropriation bills is not "guillotined."[2] Thus the consideration of amendments to the Agricultural appropriation bill, which consumed 12 days in the Sixty-fourth Congress according to Mr. Madden, took up only three and one-half hours in the "long" session of 1926. To the Legislative bill were devoted, in 1916 and 1926, six and one-half days, and one-half hour, respectively. Clearly the real decision on most matters of expenditure has passed from the Capitol to the Bureau of the Budget.

Executive sessions of a committee are strictly secret and confidential. The votes are not a matter of public record. On the other hand, it is wholly within the committee's discretion to decide whether "hearings," for the purpose of taking testimony, shall be secret or public. Jefferson's *Manual of Parliamentary Practice*, which still has force insofar as it is applicable and not inconsistent with the House rules and orders, says of the committees: "Their proceedings are not to be published, as they are of no force till confirmed by the House."[1] To this source, in the absence of any specific rule of the House, is to be ascribed the secrecy which enshrouds the committees.

During the subsequent debate upon a bill in the House, Members are often sorely tempted to disclose what went on in committee. But to do so would be considered a breach of good faith and of established practice.

Proceedings of committees in Parliament are open to review by the Commons. Advocates of a similar freedom have occasionally raised their voices in Congress to lift the veil of secrecy. Thus Mr. Norris was prevented only by the "caucus gag rule" from proposing such a change of the rules in the Sixty-second Congress,[2] and Mr. Moore of Virginia spoke against committee secrecy before the Committee on Rules on December 20, 1923.

The practice undoubtedly furnishes an opportunity for the working of corrupt influences. But Congress has been remarkably free on this count in recent years. More important is the fact that when the light of publicity does not fall upon the acts or the omissions of a committee, committeemen cannot be held responsible even to their own constituents. Nor can either party be held accountable. It would probably be wise to make public record of all formal votes in committee.[3]

[1] A spirited debate took place on January 7, 1927, through an attempt to provide in the Naval appropriation bill for three new cruisers, previously authorized. President Coolidge in the budget message had urged delay in embarking upon this building program, and the Appropriations Committee followed his recommendations. But Speaker Longworth, both floor leaders, and Chairman Butler of the Naval Affairs Committee revolted on this question of policy, holding that cruiser strength should be kept more nearly up to the 5-5-3 ratio, and arguing that the Navy be increased for trading purposes, with a view to a second disarmament conference. The House refused the increase, but the proposed item, inserted in the Senate, was later agreed to in reduced amount by the House. The fact that France and Italy had declined the call to a new conference, and that Japan's reply had been qualified, helped bring about the shift of enough votes to give a majority for the new cruisers.

[2] A term applied in England to describe a form of closure, originally used by Liberal Unionists in 1887 to bring the Crimes Act to vote in the House of Commons.

[1] Sec. XI, sentence 5.

[2] C. R. 62-1, p. 64; Apr. 5, 1911.

[3] In several legislatures, for example, the New York Assembly (1926) and the Illinois House (1925-6), a record of how each committee member voted on each report is required to be included in the report. The news-

To throw open the doors altogether, on the other hand, would invite "playing to the galleries," inject more partisan politics—as has been the effect of open investigations—and deprive measures of that impartial, scientific study which it is the function of committees to give. The present silence of committees saves the public many times from nervous shocks which it otherwise might receive from freak measures, sponsored by a sensational minority. Public opinion is concentrated where it can most helpfully be applied, namely, upon those measures which have sufficient backing to come before the House.

Of course, there is always the chance that a committee may use secrecy and irresponsibility of members as a cover for inaction to defeat the will of the House. To meet this situation, some rule for the discharge of committees is necessary.[1] But such action, before it takes effect, should represent the well-formulated will of the House to proceed to the enactment of legislation.

papers in practice do glean the main facts of action by Congressional committees upon legislation which is in the public eye. Even the vote is sometimes published. Thus in effect Members of the House are often dependent upon the press for information regarding the doings of the committees.

[1] *Infra*, chapters X and XI.

CHAPTER V

AGENTS OF PARTY STRATEGY

There is, of course, no basis in the Constitution of the United States for either parties or party leadership. But the fact of parties, with their sectional complications, demands an effective leadership in the House of Representatives. To the model of such leadership the rules and practices of the House have inevitably been taking shape.

Americans, though impatient of discipline, are coming by ways of bitter experience to learn the value of party organization in their legislatures. History abounds with stories of bungled sessions, haphazard results, and laws framed without plan or consistency. In a series of individual surveys of state legislatures, these results are commonly ascribed by various observers to the lack of definite and continuous leadership in the several states.[1] Mr. Walter Thompson's observations upon Wisconsin are entitled: "A keen study of a legislature which has led the way in many reforms of procedure but now suffers for lack of party organization and leadership. Nothing has yet appeared to fill the place of the old-fashioned boss." He states that "one had only to visit a session in either house and listen to the assertions of the tired members to have this conclusion affirmed. 'We are wasting our time with trivial matters; why can't we get together and do something?' "[2]

Even to-day in the national House of Representa-

[1] Published under the series title, "Our Legislative Mills," in the *American Municipal Review*, vols. XII and XIII (1923-4).

[2] *Ibid.*, vol. XII, p. 609.

tives, a party is prone to take to itself credit for its legislative successes without responsibility for the indiscretions and shortcomings of the Congress. Thus the exclusion of the Japanese was accomplished in a way [1] which was not approved by the President or Secretary Hughes, and was bitterly resented by the Japanese people, when essentially the same results might have been accomplished in an inoffensive manner. Congressional leaders failed to measure up to their full responsibilities when they did not consult with the President or the Department of State to discover diplomatic means of approach to so delicate a problem.

Not only does the constitutional separation between Congress and Executive, and between Senate and House require the unifying influence of party, but there exist necessities within the House itself. The bane of our national legislature has been narrow sectionalism, with its inevitable "log-rolling." This is inherent in a leaderless House, for the political necessities of each Member prompt him to be first a "delegate" and only incidentally a "representative." There is, to be sure, much "swapping of tobacco across the lines" even between party leaders. But the widespread support upon which each party is based requires that this type of bargaining, when it occurs, should be on a broader basis than agreements between individuals.

Viscount Bryce in some of his last observations inclined to the view that party discipline has a wholesome effect upon the character of legislators themselves:

"Party discipline in a legislature imposes a needed check on self-seeking and on the greater mischief of corruption. The absence of discipline, far from helping conscience to have free scope, may result in leaving the field open for selfish ambitions. Some years ago a group of strong men who had practically controlled the party majority in the United States Senate was broken up, and party discipline vanished. Ingenuous persons expected an improvement. But the first result was that a few pushing men came to the front, each playing for popularity, and things fell into confusion, the legislative machine working in so irregular and unpredictable a fashion that a call soon came for the restoration of discipline." [1]

[1] The Johnson-Lodge immigration bill, signed by President Coolidge on May 26, 1924.

What makes the American Speaker "political," and distinguishes him from the purely impartial Speaker of the House of Commons, is not any longer so much what he does as a presiding officer on behalf of the majority, as what he does not do on behalf of the minority. In the Commons, where the closure is simply the motion "that the question be now put," like our "previous question," the Speaker has an absolute discretion in accepting the motion. He will refuse it if he considers it to be "an abuse of the rules of the House or an infringement of the rights of the minority." In other words, he will not entertain the motion if he thinks that the subject of the debate has not been sufficiently discussed.[2] Thomas Jefferson, indeed, looked upon the rules as a protection for the minority. But since his time, the rules have so developed as a vehicle for the program of the majority [3] that the Speaker need only apply them, to serve, on the whole, the ends of his own party. There is seldom need for him to discriminate as a moderator in order to promote his aims as a political leader.

This was true, in effect, even under the Cannon régime, although the Speaker was then vested with great power in his own right. When Mr. Cannon expounded his theory of a responsible Speakership, he pointed out that the Speaker was at any time remov-

[1] "Modern Democracies," vol. I, pp. 135 f. (London, 1921).
[2] *Constitutional Year Book*, 1926, p. 177.
[3] This fact will be more fully developed in the following chapter.

able by the House. This was technically true, but it was not easy to make a case against the Speaker on the basis of the *Record*. He but used the power given him under the rules, and when he refused recognition or brought pressure to bear upon committees, there was no record of such refusal or pressure.

When Mr. Cannon did, in 1910, announce to the House that a motion was in order to declare the Chair vacant, this action was voluntary on his part. The motion to that effect, promptly offered by Mr. Burleson, had not been contemplated in the plans of the insurgents, who voted against it. If Mr. Cannon had not voluntarily opened the way, they could have claimed no sure precedent for such a motion from the floor. Resolutions for the removal of officers are presented as a matter of privilege,[1] it is true, and on several occasions the House has removed or suspended other officers, such as the Clerk and Doorkeeper. At all events, the allies who resorted to revolutionary tactics, as they frankly styled them, to put the Speaker off the Committee on Rules, could have employed the same tactics to depose him. But the insurgent Republicans were unable to see any other result from such action than the election of a Democratic Speaker, at which they balked. Under the two-party system, the removal of a Speaker is not a practical method of revolt against party leadership unless the revolters are willing to change their party allegiance, or can gain control of their own party caucus. It has never been done.

Despite the loss of essential functions formerly exercised by the Speaker,[2] certain discretionary powers remain. The reaction of 1909-1911 was not, as is often supposed, against the "Reed rules," which are still in force. The Speaker can count a quorum which is

[1] Hinds' *Precedents*, I, 284-6. [2] *Supra*, Intro., pp. 5, 7, and 11.

physically present, even though some Members refuse to vote;[1] and he can refuse to entertain motions which in his opinion are dilatory, though his discretion in this regard is pretty much circumscribed by certain principles which have grown out of the precedents.[2] In addition to the Reed rules, he retains his right to appoint select and conference committees. His greatest single remaining power in the matter of controlling the activities of the House itself is with regard to suspensions. Although certain days are specified for motions to suspend the rules,[3] there is not, as in the case of unanimous consent, a calendar of bills which is automatically called by the Clerk. The Speaker may refuse to recognize Members, or he may discriminate between them. Members wishing recognition usually consult with the Speaker in advance. Naturally he will admit the motion of the accredited Member who seeks to carry out the program approved by the Steering Committee of his party.

When discretion is left to the Speaker to choose between motions of equal privilege, there is no appeal from his decision. Thus on February 15, 1923, Mr. Cramton in his own right offered the privileged motion to discharge the Committee on the Judiciary from a resolution of inquiry directing the Secretary of the Treasury to furnish the House certain information regarding intoxicating liquors consigned to foreign embassies. The rules provide that resolutions of inquiry be reported back within seven days. Nevertheless, Speaker Gillett recognized instead Chairman Campbell of the Committee on Rules to give a report from that Committee, on the Navy bill, al-

[1] The "disappearing quorum" of the nineteenth century. See Alexander, pp. 158-178.
[2] For a list of motions which on occasion have been considered dilatory, see House *Manual*, sec. 785.
[3] *Infra*, p. 120.

though the *Record* does not show that Mr. Campbell asked for recognition previous to the time when the Speaker decided in his favor.[1] Mr. Cramton's motion was clearly in order, as the seven days had expired. But the Speaker held that both motions had equal privilege, and "that it is entirely a matter of recognition by the Chair." Even Mr. Garrett, the Democratic leader, admitted that he could not differ with the Speaker "on the ground of recognition." It may be noted, however, that it often pays for a Member to break out of harness, if he has a good cause. On the following day, Mr. Cramton was granted consideration, and his inquiry was sanctioned by the House.

Certain unanimous consent requests fall outside the Consent Calendar, which applies only to the passage of bills. There are many requests for unanimous consent to address the House, to extend remarks in the *Record*, to dispense with business on one of the special calendars, or to agree as to the time or duration of debate on a certain bill. In the recognition of such motions, the Speaker has complete discretion. He will ordinarily give preference to the Floor Leader. If, however, a private Member claims attention, the Speaker can learn the intent of the motion to be made, without committing himself to recognize the proponent, by inquiring, "For what purpose does the gentleman rise?"

On June 11, 1919, Representative McKinley rose without warning and asked unanimous consent to change the reference of a bill. Champ Clark stated to the House that it had been the practice when he was Speaker to bring such proposals to him in advance. Speaker Gillett then announced a similar policy. "In the future," he stated, "the Chair will probably not recognize anyone to ask unanimous consent unless he

[1] C. R. 67-4, pp. 3701-3.

knows in advance the subject for which unanimous consent is asked." [1]

In two respects the Speaker of the House of Representatives lacks powers which have settled upon his English counterpart. Under the device known as the "kangaroo," adopted by the Commons in 1919, the English Speaker is given power to select amendments for discussion by the House, passing over those he deems less important. No such power is lodged in the Chair of the House of Representatives. Then again, the rulings of the English Speaker cannot be questioned by any Member. The Commons must abide absolutely by the decisions of the "umpire." But in the House of Representatives any Member may appeal from a parliamentary ruling of the Chair. Such appeal is debatable, and is determined by majority vote of the House. But as a matter of fact, the Speaker's adherents can shut off debate by voting to lay the appeal on the table. The motion to lay on the table is not open to debate, and if it is decided in the affirmative, the appeal is lost.

Comparatively few decisions are overruled, however, by the House. Speaker Clark, during his eight years in the Chair, was sustained in each of the nine appeals by more than a party vote, except that just two days before the expiration of his last term as Speaker, in an election case, when the Republicans were temporarily in a majority, he was overruled by the House in what he afterwards termed an "absolutely just decision." [2]

The greater powers of the English Speaker in these respects come from the trust of the Commons in his absolute impartiality. They are not attributes of leadership, but marks of disclaimer. The American

[1] C. R. 66-1, p. 972.
[2] Clark, "My Quarter Century of American Politics," p. 310 (1920).

Speaker sees it as his duty to smooth the legislative way for the majority party to enact its program, insofar as he can do this without showing "favoritism in the treatment by the Chair of either parties or individuals."[1]

If he is conscientious in the latter respect, however, he finds himself so hedged about by precedents and considerations of fairness that the points of discretion remaining to him, which are but the fringe of his former power, are of only secondary aid to the party. His position of leadership depends largely upon his past reputation as a prominent partisan, and varies with the present influence of his personality behind the scenes. He may be the party mentor, but it is only because the men who do the real work consent to make him so.

The contrast with the position of the Speakership before 1910 is marked. Then there was in effect a system of personal government under the Speaker of the House. That he was the head of the whole system was hinted by Mr. Cannon in his droll way when he wrote with reference to his own Speakership: "Even great leaders in Congress, in moments of careless letter-writing, shift responsibility from their own shoulders to the most convenient piece of furniture in view."[2] Speaker Henderson, Mr. Cannon's predecessor had referred to the chairmen of the committees as "my cabinet." A feeling of loyalty was expected,[3] nurtured by the Speaker's arbitrary powers to punish or reward.

It is well to have unity of control, but such control

[1] Speaker Longworth's address of acceptance, C. R. 69-1, p. 382; Dec. 7, 1925.

[2] "The Power of the Speaker—Is He an Autocrat or a Servant?" *Century Magazine*, June, 1909.

[3] Speech of Congressman Hepburn in the House, C. R. 60-2, p. 2654; Feb. 18, 1909.

is badly placed in the hands of the presiding officer. He then becomes a judge in his own cause. Royal despotism flourished by a combination of these two types of power, when kings both controlled the political arm of the government and could throttle the courts of justice. The leadership of the Speaker was scarcely more than a transitional step on the way to frank party control. It tided over the time when Americans, inheriting from the founders of the Republic a primitive distrust of parties, would tolerate the substance but not the semblance of party government.

Since 1910, the legislative powers of the Speaker, as distinguished from his judicial functions as a presiding officer, have been placed for the most part in other hands. At first the leadership was incidental to some other position, such as the Chairmanship of the Committee on Ways and Means under the Democrats, or entirely unofficial, as in the case of the Floor Leader when the Republicans first returned to power.

Even now the position of Floor Leader is not official in the sense that it is provided for by the rules. But to all intents and purposes it is recognized as such. At the beginning of the Sixty-ninth Congress, Mr. Hawley, Chairman of the Republican caucus, announced as a matter of public record that Hon. John Q. Tilson, a Representative from the State of Connecticut, had been selected as majority leader.[1] On December 22, 1926 Speaker Longworth definitely asserted his duty of carrying out an understanding based upon remarks of Mr. Tilson, in colloquy with Mr. Garrett, minority leader. The upshot of this conversation had been that no contested matter should be brought up on the day before the holiday adjournment. On the basis of this assurance, many Members had already

[1] C. R. 69-1, p. 382; Dec. 7, 1925.

left for their homes. The Speaker therefore refused to recognize Mr. Dempsey to take up the conference report on the controversial rivers and harbors bill.

At the same time that there has been going on this new localization of control in the hands of the Floor Leader, there has been evident a second tendency, which is quite distinct, namely, to broaden the basis of support by distributing the chief positions among more Members of the party. Thus at the time of the origin of the Steering Committee in the Sixty-sixth Congress, the Republican caucus provided by rule that no chairman of a committee of prime importance should be a member of it. Similarly at the beginning of the Sixty-ninth Congress, the caucus decreed that a Member could not be at the same time chairman of a committee and a member of the Committee on Rules. It was felt that a man holding both positions might favor his own committee in the matter of special rules. Mr. Johnson of South Dakota, who was the second ranking member of Rules, was thus debarred from that Committee because he was Chairman of the Committee on World War Veterans' Legislation, and Mr. Scott of Michigan was dropped because Chairman of Merchant Marine and Fisheries. To the same general effect is the practice, also sanctioned by caucus action of both parties, of holding certain committees "exclusive." Membership on one of these committees precludes membership on any other committee. And it is interesting to note that neither Mr. Longworth nor Mr. Tilson, after becoming Floor Leader, was a member of any committee of the House.

So far as the Floor Leader, the Steering Committee, and the Rules Committee are concerned, therefore, the leaders of the House are no longer, as they were when Mr. Wilson wrote, "the chairmen of the principal

standing committees."[1] Chairmen are still, to be sure, men of influence over the subject-matter of bills within their jurisdiction. But they do not make up the superstructure which has come to control "overhead" strategy.

On crucial matters, the Floor Leader often calls together his informal "board of strategy." This group of intimates varies according to the issue of the moment. It usually, however, includes Speaker Longworth and Chairman Snell of Rules, while Mr. Madden, Chairman of Appropriations and of the Committee on Committees, and Representative Begg of Ohio, who managed Mr. Longworth's campaign for the Speakership, frequently enter into the consultations.

Behind this nucleus stand an increasing number of men who are "on the inside." Each one so included becomes less a critic and more an advocate. There are the Chairman and the Secretary of the caucus, and the party Whip. The Steering Committee has been increased from five to eight members, in addition to the Floor Leader, who is *ex officio* Chairman, and the Speaker, who usually attends. The majority members of Rules have likewise increased from three to eight, when the total membership of that Committee grew from five to twelve. The Republican Committee on Committees includes one member from each of the 37 states having Republican representation. In advance of action, moreover, the leaders often consult private Members who have interviewed the President, have been invited to breakfast at the White House, or who in any manner have distinguished themselves in Congress upon the subject under review.

This multiple participation in leadership results in government by a party rather than by a single individual. The Floor Leader is able to devote himself,

[1] Woodrow Wilson, "Congressional Government," p. 60 (1885).

as a General, to major questions of strategy, because he delegates authority in minor matters to his staff officers. He thus is spared much small criticism. Occasionally even on important problems he may personally differ with the predominant opinion of the House. The system is so elastic that, in the absence of caucus instructions, he may then withdraw behind the scenes temporarily, only to return when the embarrassing issue is past. Of course, such an incident is apt to diminish his prestige. Thus in 1916, when the Democratic leader, Mr. Kitchin, was out of sympathy with President Wilson's policy of preparedness, belated as it was, he simply allowed the chairmen of the committees reporting such measures to take the leadership a little more conspiciously on the floor.

When there are no acute issues on which the parties differ, the flexibility of the present system brings greater stability of party tenure. As the mythical king regretted, on occasion, that his people had not one neck so that he might sever it at a single stroke, so the difficulty of overthrowing a political party increases when its lease on power is not bound up with the political fortunes of one man. There is security in the dispersion of risk among a numerous corps of leaders.

Nothing shows more clearly the distribution of power and the growing spirit of friendly cooperation, than the changed position of the Committee on Rules. During the 20 years before 1910, only nine Republicans and eleven Democrats were invited to join that inner circle;[1] but in half the time, during the last five Congresses, twenty-one Republicans and eight Democrats in all have sat on Rules. Formerly it was the inner

[1] Atkinson and Beard, "The Syndication of the Speakership," *Polit. Sci. Quart.*, Sept., 1911, p. 414.

sanctum, to which only the Speaker and his two chief men, often the chairmen of Ways and Means and of Appropriations, could gain admittance. The party leadership was frankly identified with this triumvirate. The Republican caucus in 1909 even specified the Members who should be appointed to represent the party on this Committee,[1] although the usual custom had been to leave the Speaker free to choose his associates. The special order, which by a decision of Speaker White in 1841 could be adopted by a simple majority vote, began to be used after 1883 to set times and methods for the consideration of such bills as the Committee might prefer for passage.[2] Against the Committee armed with such a weapon, the standing rules of the House were of no binding effect.[3]

The members of the Committee on Rules are no longer the dominant personalities of the House, although the Chairman is a figure of importance by virtue of his position. The Committee still possesses its unique privileges of sitting while the House is in session, of varying the rules by special orders, and, with certain recent limitations which will be noted,[4] of securing summary action upon its reports.[5] It is the trump card of the Floor Leader, but he himself is not officially identified with it. True, he must appeal to the

[1] Hinds, *Am. Polit. Sci. Rev.*, May, 1909, p. 162.
[2] Hinds' *Precedents*, IV, 3152; V, 6870.
[3] While legislative rules of order are enforceable in the last analysis only by a majority of the legislative assembly itself, the initiative of private Members in the House of Representatives has been hedged about by the provision that the rules could be suspended only by a two-thirds vote. For the basis of parliamentary "law", see Gooch, "The Legal Nature of Legislative Rules of Procedure," *Va. Law Rev.*, May, 1926, pp. 527-545.
[4] *Infra*, p. 97.
[5] Clause 56 of Rule XI sets up a special safeguard against filibustering tactics. Pending the consideration of a report from the Committee on Rules, the Speaker may entertain one motion to adjourn, and after that "he shall not entertain any other dilatory motion until the said report shall have been fully disposed of."

reason of 12 men, and win a majority of them to the support of his proposals. But the mainspring of action is not in the Rules Committee. The impulse comes from the Floor Leader after consultation with his "board of strategy," or, for purposes of more formal and routine action, with the Steering Committee.

There has been as a consequence no decrease in the number of special orders,—there has been in fact a slight increase,[1]—but, since the Sixty-seventh Congress, their terms have become less arbitrary. There have been more reasonable allowance for debate and less restriction of amendment. This increase in the number of special rules results from the growing demand on all sides for certainty of the legislative timetable, and would be more pronounced if it were not for the fact that the Floor Leader whenever possible uses the simple, less overbearing expedient of unanimous consent.[2]

Not only does Rules serve as a "sifting committee." It may also free the House from the restrictions of its own procedure. It met the Williams filibuster in the spring of 1908 by a report on April 20, which allowed a majority to suspend the rules at any time for the remainder of the session. Likewise, its reports may make suspensions by the ordinary two-thirds vote in order on special days.[3] On May 29, 1920 a special rule made suspensions in order for the rest of the "long" session. The purpose was to pass

[1] See tabulations in reviews of the various Congresses under the caption, *American Government and Politics*, edited by Lindsay Rogers, in the *Am. Polit. Sci. Rev.* Appendix B of his "American Senate" (1926) lists special orders for several recent sessions.

[2] Note even the unanimous consent agreement, adopted substantially as proposed by Mr. Tilson on May 27, 1926, to govern and end general debate on the rivers and harbors bill (withdrawing water from the Great Lakes for a canal to the Gulf), against which there had been a determined filibuster.

[3] For example, Thursday, March 23, 1922.

the bonus bill and adjourn, if possible, before the national conventions.

Enjoying unusual privileges, the Rules Committee, and particularly its Chairman, possessed powers which could be exercised in an arbitrary fashion. Against the grosser abuses which were possible, therefore, certain restrictions have been placed upon the activities of the Committee. The Fitzgerald amendments to the rules on March 15, 1909 provided that no special order shall (1) set aside Calendar Wednesday, except by two-thirds vote of the House, nor (2) prevent a motion to recommit a bill. The effect of the first restriction was somewhat lessened, however, by a ruling of Speaker Gillett in the case referred to above, when suspensions were made in order for six days. The Speaker held that a special order could not aim directly at overthrowing Calendar Wednesday, but that an order couched in general terms may indirectly have that result.[1]

A further restriction was added in the revision of January 18, 1924. The House at that time protected itself from "snap" tactics by providing that the Committee on Rules could not call up a report for consideration on the same day it was presented to the House, unless by a two-thirds vote.[2] This provision does not apply, however, during the last three days of a session, when the Membership ought to be prepared for strenuous action, and when the "sifting" function of the Committee needs to be freely and fully performed.

At the same time, the members of the Rules Committee were protected against having their will defeated by the failure of the Chairman to make a report as ordered by the Committee. In point of fact, the

[1] C. R. 66-2, p. 7923; May 29, 1920.

[2] Second paragraph of clause 56, rule XI, matter in parentheses.

Chairman of Rules has a wide discretion in choosing the proper time to apply the procedural stimulants which have been prescribed by the Committee. In the Sixty-seventh Congress, however, Chairman Campbell had carried this discretion to the extreme of holding in his pocket a number of resolutions on which he had been authorized to report by the Committee some weeks before.

The complaint was loudest when he took this means of defeating the so-called Woodruff-Johnson resolution, for an investigation of contracts by the Departments of Justice, War, and Navy under Secretaries Daugherty, Weeks, and Denby, and by the Alien Property Custodian. Of course, if the chairman is opposed to a report, it is the practice for a committee to designate some other member to make the report. The same principle would ordinarily apply in the Committee on Rules; but in this case Mr. Campbell had originally (on May 3, 1922) cast the deciding vote for the resolution in the Committee. He thus held the balance of power. He kept the report in his pocket for four weeks, along with a number of others, and during this time his own attitude toward the proposed investigation changed. Members "were asking almost daily that he report the rule and he would only smile at them."[1] On May 26th, when it became clear that delay was being used to suppress the investigation, Representative Johnson, a majority member of the Committee on Rules, rose in the House to a question of privilege and contested Mr. Campbell's right to hold the resolution longer. "If I did not raise the question to-day," he explained, "the entire parliamentary situation might possibly change because of a reconsideration of the rule by the Rules Committee."

Speaker Gillett, however, denied him the privilege of

[1] Statement by Representative Blanton, C. R. 68-1, p. 1004.

compelling the Chairman to report. "It appears," said the Speaker, "that in this case the Committee on Rules has adopted within the last month a number of rules, including this, and has instructed the Chairman to report them. There is at least one that is much older than this still pending, and there are others which are a little older." He held that the Committee might have instructed the Chairman as to the order in which he should report these special rules, but that, lacking such instructions, the Chairman could use his discretion.[1] An appeal was taken from the Speaker's decision, but was laid on the table by a vote of 149 to 114. Five days later the Committee met and withdrew the resolution without giving the House any opportunity to express a judgment upon its previous report.

As a result, when the rules of the House underwent revision in several particulars in the following Congress, a paragraph was added as follows:

"The Committee on Rules shall present to the House, reports concerning rules, joint rules, and order of business within three legislative days of the time when ordered by the Committee. If such rule or order is not considered immediately it shall be referred to the calendar and if not called up by the member making the report within nine days thereafter, any member designated by the Committee may call it up for consideration."[2]

These restrictions limit merely the more glaring abuses. They do not seriously hamper the legitimate use of the special order as an instrument for bringing to pass the will of the majority.

[1] C. R. 67-2, pp. 7744-5.
[2] Part of rule XI, cl. 56; adopted January 18, 1924.

CHAPTER VI

CONTROL OF THE TIME OF THE HOUSE

The daily Order of Business [1] as it exists to-day was formulated by Speaker Reed in 1890. The most important feature, modeled after the practice of his own day, was the "morning hour" for the consideration of bills called up by committees. For some years, however, the "morning hour" has fallen into disuse, submerged by the press of business to which the House has given one kind or another of special privilege.[2] It has become, indeed, so much of a dead letter that the call under this rule has not even been printed in the daily calendars issued subsequent to the Sixty-seventh Congress. The last call, on August 24, 1921, rested with the Committee on Labor.

That the House has thus abandoned a daily routine has placed the time of the House more closely under the control of the party leaders. Their directive influence is particularly clear in the first group of privileged matters, including special orders, privileged committee reports, conference reports, and precedence for revenue and appropriation bills; while it is able to penetrate even to the other group, the six types [3] of business for which certain days have been set apart in the standing rules. The activity of the leaders in the

[1] Rule XXIV, clause 1.

[2] The House *Manual* (sec. 858) lists 12 types of privileged matters which may interrupt the Order of Business.

[3] Bills proposed by unanimous consent, or by suspension of rules, motions to instruct committees, the call of committees on Wednesday, private bills, and District business.

first group forms the subject of the present chapter. While the rules governing the second group set up a more or less stereotyped procedure to be followed, the manner in which the leaders work their will on occasion, notwithstanding, will be illustrated in the following and succeeding chapters.

The most important phase of party control is not after all the occasional rallying of Members to its support on a roll-call. This task is in the hands of the party Whip, who is by no means always successful in rounding up the desired number of votes. This sort of control is sporadic. The most skillful leaders, in fact, contrive to have very few such tests of strength.

The party managers lead by governing what the House shall consider. Nor are they specially vested with this power by the rules. Every Member is on a theoretical equality. The leaders act by virtue of their power to command a majority, and by virtue of their positions on privileged committees. Their excuse for neglect of a measure is seldom that the legislation is bad, but that more pressing matters are before the House. They restrict the class of passengers on the legislative "limited," not so much by putting any off, as by adapting their time-table exclusively to the benefit of desirable patrons.

Such control is constant. By selecting some measures, it vetoes others, and this veto is far more effective than that of the President. It is akin to the ancient power of the King of England, who alone had the initiative in proposing laws to Parliament. In England, that power is still in substance, though not in form, vested in the executive, which, however, as the Cabinet, has come to be the creature of a majority party in Parliament. The British Cabinet dominates, too, by controlling the time of the House, until private

members are coming to see the futility of introducing bills. "Government business has precedence at every sitting except after 8:15 p. m. on Tuesday and Wednesday, and the sitting on Friday. After Easter, Government business has precedence on Tuesday, and after Whitsuntide, until Michaelmas, at all ordinary sittings, and nearly all Friday sittings."[1]

The House of Representatives has led all American legislatures in the science of party leadership. This is due to its position as the organ of our national Government intended to be most responsive to the electorate. But the movement toward party control has been hastened by the large size of the House. The number of Members has grown from 65 in the first Congress, to 435 under the apportionment of 1911, despite the fact that the ratio of representation has been increased from 30,000 to 211,877. The history of the House clearly illustrates the principle which James Madison laid down in number 58 of *The Federalist,* that "in all legislative assemblies, the greater the number composing them may be, the fewer will be the men who will in fact direct their proceedings."

This result is strikingly shown by the physical situation alone. Until 1913, each Member had a seat and desk. Of these, however, there were only 400, and when the size of the House increased from 396 to 435 Members under the Thirteenth Census, the removal of individual desks became necessary. Instead, a table was provided on each side of the center aisle, near the aisle and well toward the front, for the use of Members in charge of bills. As a matter of fact, the whole control of the proceedings of the House centers around these two tables, where the leaders of the majority

[1] The *Constitutional Year Book,* 1925, p. 175.

and of the minority respectively take their places, as generals before their respective hosts.

The need for some *point de ralliément* is now keenly felt even in non-controversial discussion. Thus, when the House set aside a day for speeches on conservation and reforestation, during Conservation Week, the following colloquy took place:

> Mr. Jones. I am perfectly willing that discussion shall be had, but I do not believe that it should be in the control of anybody. Why not have it open without any control?
> Mr. Davey. Some one will have to control it.
> Mr. Woodruff. It will be necessary for some one to control the time.[1]

The House commonly considers bills under agreement to limit general debate to a certain number of hours. The usual practice is then to divide the time equally between Members speaking *pro* and *con.* All time in favor of the bill is controlled by the Member reporting the bill, usually the chairman of the committee, while the time in opposition is usually controlled by the ranking minority Member who may be opposed to the bill. If no member of the committee is opposed to the bill, any other Member of the House is entitled to recognition, preference being given to the minority party. These two Members have full power to discriminate among those who apply to them for an opportunity to speak. They customarily give preference to their colleagues of the committee which reports the bill. Often the whole time is monopolized in this way by the committee. On other occasions, however, the number of minutes requested by individuals is cut down, so that the time may be distributed as widely as possible among all those who ask to speak.

The precise occasion when a measure comes up for vote often counts heavily in determining the result. It

[1] C. R. 69-1, p. 7202; Apr. 9, 1926.

is said that Alexander Hamilton watched closely the absence of his enemies and the presence of his friends, waiting until the time was most opportune before giving the word for action.

The rules of the House give to 11 committees the right to report at any time.[1] There would be little advantage in the fact alone that these "privileged reports" are made from the floor, while reports of other committees are merely filed with the Clerk. But the right of reporting at any time regularly carries with it the right of immediate consideration by the House.[2] Moreover, a matter so reported remains privileged until disposed of.[3] But the House can proceed to its consideration only on motion made by the spokesman of the committee which made the report. A privileged status is accorded in this way, for example, to special orders from the Rules Committee providing a time and manner for the consideration of selected legislation,[4] and to revenue and appropriation bills. Similarly, conference reports can be presented for action at any time [5] considered opportune by the majority managers of conference.

The device of unanimous consent in the hands of the Floor Leader, moreover, is not always so inconsequential as it appears. The work of the House is sometimes described as "legislation by unanimous consent," not because, as in the Senate, one Member has power to block action by a majority, but for the reason that the Floor Leader so often employs this means of announcing his program.

[1] Rule XI, clause 56, confers this right upon Rules, Elections, Ways and Means, Appropriations, Rivers and Harbors, Public Lands, Territories, Enrolled Bills, Invalid Pensions, Printing, and Accounts. The right applies in each case, however, only to specified classes of business.
[2] Hinds' *Precedents*, IV, 3131-2, 3142-7.
[3] *Ibid.*, IV, 3145.
[4] For special powers and restrictions of this committee, see *infra*, pp. 95-99.
[5] Rule XXVIII, clause 1a.

He is able to make common use of "unanimous consent" simply because his majority is taken for granted. Some one must settle the program of business, and if anyone else presumes to do so, the Floor Leader can defeat him by objecting. In most cases, the minority leaders are willing to leave the responsibility with the majority leader. It is greatly to their advantage to know when they must be ready, even to oppose a measure, if they contemplate opposition. Usually no one else will object, if the minority leaders do not. The individual Member knows full well that his objection could do nothing but delay the program, since the majority could work its will by bringing in a special rule. Thus Representative Blanton, who opposed the Parker-Watson Railroad Labor Board bill on the ground that it did not protect the interests of the public, refrained from objecting to Mr. Tilson's request for unanimous consent that the bill continue to be in order until finished. "I realize the same end may be accomplished by bringing in a rule," was the practical reasoning by which Mr. Blanton decided to withdraw his objection.[1]

Unanimous consent requests to consider legislation out of its turn are usually the result of private agreements between the spokesmen of the two parties. The majority leader customarily consults not only the chairman of the committee which is in charge of the bill, but also the ranking minority Member of that committee. Mr. Garner, for the Democratic minority, on the floor of the House in the Sixty-ninth Congress, claimed this as a courtesy if not as a right.[2] It is a custom which the minority is, of course, able to enforce, by objecting. In utilizing this device, the Floor Leader may therefore have to give more than he can

[1] C. R. 69-1, p. 4400; Feb. 23, 1926.
[2] C. R. 69-1, p. 3027; Jan. 30, 1926.

take. If he wants to run roughshod over his political opponents, he will call upon the Committee on Rules for a special rule. This enables a majority to work its will without regard to the feelings of the minority.

Sometimes the Speaker allows an unwelcome motion to be made by a Member of the opposition, and trusts the majority leaders, who are generally present and alert, to keep it from going through. It is necessary, however, to have regard to the feelings of the private Member who has a unanimous consent request to prefer. Such a Member, if disgruntled, can retaliate by blocking similar requests by the party leaders. Thus on May 24, 1926, Mr. Celler of New York asked unanimous consent to proceed for two minutes on the subject of the recent Executive Order which permitted state officials in California to be taken into the federal prohibition enforcement service. Mr. Begg, assistant to the Floor Leader, objected. Later in the day, Mr. Linthicum of Maryland asked to be allowed ten minutes to discuss the same subject during general debate on District bills, although there was pending a request by Chairman Zihlman that such debate be confined to District business. Mr. Linthicum, denied his ten minutes, objected to the Zihlman request. As a result, the whole debate was thrown wide open to an extended discussion of the Executive Order.

It is the business of the Floor Leader, and to his interest as well, to keep the House busy. Occasionally, in odd moments, independently-minded Members begin an "unorthodox" debate in criticism of the legislative program. It is then high time for the Floor Leader to give the House something to do. On March 26, 1926, the way was open for such a discussion on behalf of the Spanish-American War Veterans' bill, by a *pro forma* amendment "to strike out the last paragraph" of a routine omnibus pension bill. Republican leaders were

criticized for not putting forward the veterans' bill. Members expressed the fear that the Administration's economy program would find no place for such legislation. The debate was allowed to proceed for a time, but when it began to get out of bounds, Mr. Tilson, the Republican Floor Leader, moved that all debate on the pending bill and all amendments thereto close in five minutes. Thereafter he raised the point of order that Members must confine debate to the pending bill. It is to be noted, however, that the desired veterans' legislation was subsequently brought forward, passed, and signed by President Coolidge, though with a warning against further drains upon the Treasury.

While the leaders have ample means to squelch hostile uprisings of private Members, they themselves are subject at any time to be checked by a bi-partisan majority. Such a majority, if it is aroused, may vote down special orders. It may refuse to go into Committee of the Whole to consider revenue and appropriation bills. It may raise the question of consideration on privileged and conference reports, and interpose questions of privilege and motions to adjourn. It may even defeat a concurrent resolution to bring a session of Congress to an end.[1]

It is difficult to see, however, how an unorganized majority could bring forward legislation which it might desire unless there were some workable rule by which it might discharge the Committee on Rules of a resolution which set a time for considering such legislation. Apologists of party control are fond of pointing out that such a majority is free to bring action on

[1] On June 21, 1926, the House refused to adopt a resolution setting a date for the adjournment of the session. This vote resulted from the pooling of many individual protests against the non-enactment of various kinds of remedial legislation. By July 2, however, the protesting majority had dwindled to a minority of 29, and the House agreed to adjourn on the following day.

any bill which is on the calendar by simply refusing to consider all intervening bills. This is remotely possible, but is such a round-about expedient as to be impracticable. Too many bills would intervene which the Members would not wish to go on record as opposing. Only on some great overshadowing issue would it be possible to hold together a bi-partisan majority on so complicated a maneuver.

Probably the nearest approach to such tactics was on June 10, 1898, in an effort to bring up the resolution for annexation of Hawaii, to which Speaker Reed was opposed. The House refused to consider several matters: for example, a contested election case. The filibuster was confined to less than one day's session, and could not of course run the whole gamut of measures which stood before the Hawaiian resolution. But it was successful as a gesture of protest. A unanimous consent agreement was adopted by which the Hawaiian resolution was to be taken up almost immediately, and an hour was agreed upon for a final vote several days later.[1]

The Irish Nationalists almost succeeded in carrying somewhat similar tactics through to the bitter end in the British Parliament. But they were elected on the single issue of Irish "home rule," to which all else was subordinated. Under the leadership of Parnell during the second Gladstone ministry (1880-1885), they inaugurated a policy of obstructing the House of Commons until their demands were considered.[2] Upon Gladstone's return to power in 1886, he advocated the first Home Rule bill, which was defeated only by a narrow margin. But the Irish party was a

[1] C. R. 55-2, p. 5766.

[2] Parnell's general word of command was: "We must show these gentlemen (the British members) that if they won't do what we want, they shall do nothing else." Quoted by Asquith, "Fifty Years of British Parliament," I, 75 (1926).

small minority, and was so nearly successful only because obstruction had theretofore scarcely been known in Parliament. Against such tactics there had as yet grown up no adequate parliamentary protection. In the House of Representatives, on the other hand, the Reed rules were devised to conquer minority obstruction.

The power of initiative in the House of Representatives thus rests pretty securely in the hands of the leaders. By virtue of agreements or of privilege granted to committees which they control, the measures which the party chiefs bring forward become the "regular order" for the time being. This power of initiative counts at least nine points in parliamentary law, for those who possess it can check any aberrations from their program by a simple demand for the "regular order." Such a demand, under the rules of the House, the Speaker must sustain.

As the party leadership has come to be more openly recognized, it has incurred new responsibilities regarding the time-table of the House. Not only has the Committee on Rules been restricted in its power to "spring a surprise" upon the House, but the Floor Leader has been led to renounce to a considerable extent the advantages he might gain from keeping Members in the dark.

The latter developments in this direction are matters of practice and precedent, rather than of duty under the rules. It is true that the Democrats on April 5, 1911 included among their new rules a provision that "calendars shall be printed daily." [1] But the practice of so doing was then time-honored, and at the time when it thus became obligatory, the House Calendar

[1] Rule XIII, cl. 5.

and the Union Calendar had already become practically worthless as indexes to the future program of the House. The Private Calendar, the Unanimous Consent Calendar, and the Calendar of Motions to Discharge Committees are helpful. But in the case of great controversial matters, the House was often held blindfolded.

A Member would wait around idly at times, while on other occasions, when absent on business, he would miss important votes. On May 11, 1920 former Speaker Champ Clark described the uncertainty of even a minority leader. "Every day 25 or 30 men will come to me, or pass where I am sitting, and ask me what is going to come up to-morrow, or when a certain thing is going to come up. I do not know, and there is no way of finding out. I go over and ask Mr. Mondell, and he does not know. I do not think there is any intentional effort to keep the House in a fog about what is coming up, but people ought to have fair notice, because they are interested in some bills and not interested in others." [1]

Even at the present time, it is possible to bring forward surprise legislation, notably on two days a month when suspensions are in order. But in two important respects the House is now taken into the confidence of the leaders.

After the discussion just mentioned, Mr. Mondell, the Floor Leader, gave notice frequently by word of mouth as to the program for a few days in advance. In the following Congress, the Sixty-seventh, he issued a little bulletin with the tentative program for a week. At first, this notice was posted where it could be consulted. Later a copy of it was sent to each Member. This practice has been continued, and tentative schedules are now sent out regularly in the name of the

[1] C. R. 66-2, p. 6878.

Steering Committee on Friday or Saturday of each week.

Another innovation was made by Floor Leader Tilson on February 3, 1926, when he announced his intention to make up a regular bulletin of committee hearings. "I hope," he said, "to have such a bulletin every afternoon to post on the bulletin board, so that Members can know what hearings are to be held before committees the next morning. (Applause.)" On the following day, he obtained permission by unanimous consent to print the tentative list of committee hearings in the *Congressional Record* after the official minute of each day's adjournment. This service began on the same day, with a list of ten hearings to be held, the subjects of the hearings, and the hour. Similar lists appeared daily throughout the Congress.

Of course, the weekly program announced by the Steering Committee is subject to change. It is impossible at times even in the House of Representatives to tell in advance how much debate a given measure will call forth. The tendency now is to rely too explicitly upon the advance information coming from the Floor Leader. As a consequence, when the House gets ahead of its schedule, the committees next in line are sometimes caught unprepared. Thus on Calendar Wednesday, May 12, 1926, it was anticipated that the large number of bills to be brought up by the Committee on Military Affairs would consume the whole day. When they were passed in 45 minutes, the House was compelled to recess until Chairman Butler of Naval Affairs could be found. His Committee, though next in line, was poorly prepared to proceed with the call. Members who expected to oppose the bills of this Committee were either absent or complained that they were unprepared to speak.[1]

[1] C. R. 69-1, p. 9315.

The extent to which Members have come to expect protection against surprise action is shown by the protest of Congressman Blanton against debate on the District of Columbia appropriation bill on the same day on which it was to be reported to the House, even though only general debate was contemplated, and this rarely deals with the specific items of a bill.[1] "During my service here, which has been nearly ten years," he declared, "this is the second time only that a supply bill, embracing almost a hundred pages, has been introduced and taken up for debate on the same day, before printed copies are generally available."

Politics has aptly been called the science of the second best. Members must often consent to lesser propositions which they do not approve in order that major principles of a bill may succeed. It is in the very nature of politics that men must not reject the possible good for the impossible best. Party leaders sometimes take advantage of this dilemma to carry their program across in its entirety. With this end in view, the five most useful devices are the previous question, legislative "riders" on appropriation bills, the restriction of amendments in the House by means of suspension or special order, and voting in gross.

The English right "to raise the question previously" was for the purpose of deciding whether to go on with the debate, and was "favorable to postponement." But what came to be called the "previous question" in the Pennsylvania legislature, and in 1811 was written into the rules of the House of Representatives in order to end Randolph's long

[1] C. R. 69-1, p. 5285; Mch. 9, 1926; and C. R. 69-1, p. 5345; Mch. 10, 1926.

speeches against Jefferson, was a device to bring debate to a close.[1]

In the practice of the House, it has developed into a means of summary action. All points of order raised after the previous question has been moved must be decided without debate, and, if the previous question is carried, no other motion can be made pending the vote on the bill, except one motion to recommit. At the best, only 20 minutes of debate are allowed to a side. If there has previously been any debate at all on the merits of the bill, even though this debate was in Committee of the Whole, or, in case of conference reports, before the matter went to conference, no further debate is allowed.

In the opinion of Congressman Gardner of Massachusetts, the use of the previous question is not so much to stop debate as "to prevent awkward amendments."[2] This observation was later borne out by the legislative history of the resolution terminating the state of war with Germany. Although general debate in this case was allowed to continue for six hours on April 9, 1920, at the termination of the general debate the previous question was considered as ordered under the terms of a special rule, and amendments were impossible.

Since the Member in charge of the bill has the floor at first, he is at an advantage in moving the previous question. Someone else did succeed in using it against the leaders in a contested election case on May 13, 1896, when the leaders were temporarily in a filibustering minority and the House was ready for action. But usually it is used in their behalf.

In 1923, Chairman Volstead of the Committee on the Judiciary gave an adverse report on the pro-

[1] McConachie, "Congressional Committees," pp. 24 and 103-4 (1898).
[2] C. R. 60-2, pp. 597 ff.; Jan. 7, 1909.

posed impeachment of Attorney General Daugherty, and announced he would offer a "whitewashing" resolution that the proposal be laid on the table. Before the debate began, Representative Thomas tried to reserve his rights to offer a substitute:

Mr. Thomas. Mr. Speaker, I desire to offer the minority report as an amendment to that report.

. . . . . .

The Speaker. The Chair will recognize the gentleman at the proper time.[1]

During the debate, the resolution which Mr. Thomas intended to offer was read for the information of the House. It proposed that the Speaker appoint a special committee to inquire into the official conduct of Harry M. Daugherty. At the close of the debate, Mr. Volstead moved his resolution to table the matter, and, without yielding the floor, concluded:

Mr. Volstead. Mr. Speaker, I move the previous question on the resolution.

Mr. Thomas. Mr. Speaker, I offer an amendment.

The Speaker. But the gentleman from Minnesota has moved the previous question. The gentleman can move the amendment if the previous question is not adopted.

Mr. Thomas. But I notified the Chair that I was going to offer the amendment.

The Speaker. But the gentleman well knows that as a matter of duty and precedents the Chair recognizes the gentleman in charge of the bill. It is in the hands of the House as to whether they wish to consider the amendment or not. If the House votes down the previous question, it shows that it desires to consider the amendment. If it votes for the previous question, it shows that it does not wish to consider the amendment.[2]

The previous question was ordered without a record vote, and the resolution to lay on the table, with the

[1] C. R. 67-4, p. 2410; Jan. 25, 1923.
[2] *Ibid.*, p. 2415.

controversial preamble stating that "it does not appear that there is any ground to believe" Mr. Daugherty guilty, was adopted by the House (206 to 78).

It is hardly possible here to go into the rules and precedents which are, on occasion, called into service to restrict amendments. Suffice it to say that in certain respects the committee reporting a bill is allowed to violate norms of germaneness which would bar out amendments offered from the floor. Also, committee amendments are given precedence,[1] and, when the time is limited under an agreement or a special rule, there is often no opportunity remaining for amendments to be offered on the initiative of private Members.

Thus, a committee may report a bill embracing different subjects, such as would not be admitted under color of amendment.[2] It is the general principle that legislation cannot be placed on an appropriation bill; nor on the other hand can appropriations be made on a bill coming from a legislative committee. But with reference to the former restriction, the so-called Holman rule in its present highly developed form allows amendments to be made to an appropriation bill even though they change existing law and are germane only in a general way to the subject-matter of the bill, provided the presiding officer can be persuaded their general effect is to reduce expenditures, and provided they are authorized by the House committee having jurisdiction over such legislation. Private Members, on the other hand, can be safe from a point of order only if their amendments, changing existing law, reduce specific items.[3]

The leaders, then, insofar as they can gain the co-

[1] *Jefferson's Manual*, sec. XXIX, par. 2, and note thereto in House *Manual*.
[2] House *Manual*, sec. 777.
[3] Rule XXI, clause 2.

operation of a committee, are at an advantage over the other Members in attaching "riders" to necessary appropriation bills. To be sure, some items slip through which might be subject to a point of order. But germaneness is one of the most important matters which the presiding officer is called upon to decide. Thus a ruling in 1887 that a second battleship could be added where one was specified laid open the way for the growth of a new Navy. This principle was overruled by Finis J. Garrett in 1919, on what Speaker Clark called the correct ground that this was introducing new legislation on an appropriation bill.[1]

The special rule is often the vehicle of restrictions upon amendment, as well as upon debate. In the rule on the tax bill which passed the House on August 20, 1921, committee amendments were given precedence, and were exempted from the test of germaneness to the particular items of the bill. As a result, no other amendments were offered.

The same rule provided that in the House the vote on all amendments should be "in gross," thus making it necessary for Members to vote for certain features which might be objectionable to them, or take the responsibility of defeating the measure as a whole. Mr. Campbell moved the previous question on the rule itself, thus shutting off debate. The only chance given the House to vote for an alternative proposition before the bill went over to the Senate was upon Mr. Garner's motion to recommit, with instructions to restore the old high surtax in place of the 32 per cent in the bill. The motion to recommit was defeated, but later, in the conference stage, the House adopted the higher surtax of 50 per cent, as proposed by the Senate.

The use of these devices to prevent revision of de-

[1] "My Quarter Century of American Politics," Vol. I, p. 312 (1920).

tail is particularly frequent in the case of conference reports. Here, however, there is greater reason for the practice. It is necessary, in the interest of agreement with the other chamber, to delegate a high degree of power to the conferees.

Similarly, the practice of amending a bill which has passed the Senate, striking out all after the enacting clause, and substituting a House bill on the same subject, prevents the House bill from being considered by paragraphs. It must be voted upon as one amendment. Even the motion to recommit, with instructions to make a specific change, is not permissible in such a case.[1]

Note will be made in the following chapter of the manner in which amendments are restricted when a bill is passed under suspension of the rules.

As the session draws to a close, the time is limited, and a mass of legislation presses for enactment. With few exceptions, only measures upon which there is pretty general agreement stand chance of passage. The House acts largely by unanimous consent, with an interspersion of special orders and of motions to suspend the rules. The jam of privileged matters calling for attention restores to the Speaker for the time being a wide range of discretion. This is a time when he can show close teamwork with the legislative leaders, and particularly with the Floor Leader.

There is a usual speeding up of the program during the last days. But there is also a tightening of control. In strong contrast to the Senate, the House remains a poised, business-like body as it approaches adjournment. The men in the cab hold the legislative train steady to the very end of its run.

[1] See, as an example, the Federal Tort Claims bill, passed June 10, 1926. Esp. C. R. 69-1, p. 11,111, Speaker's statements on final passage.

CHAPTER VII

SUSPENSIONS AND SPECIAL CALENDARS

THE fixed form of our Government has on the whole discouraged American inventiveness from being applied to politics. Within the framework of the *Constitution,* perhaps the largest field which in the main was left open to future development was the internal government of the House of Representatives.

The freedom thus bestowed by the "founding fathers" has called into play constructive genius, which has been particularly successful in devising means for segregating the several classes of business before the House. The more obvious basis on which a bill is classified has to do with its subject-matter, whether private or public, involving or not involving revenue or expenditure. Thus we have the Private Calendar of private bills to be considered in Committee of the Whole (in order on Fridays), as distinguished from the House Calendar. All public bills which would incur expense, or raise revenue, are placed on the "Union" Calendar, as they must be considered in Committee of the Whole House on the State of the Union. Finally, District of Columbia business is kept separate, and is in order on second and fourth Mondays.

A second classification of bills is based on the nature of their support. Thus bills which are not actively opposed may go to the Consent Calendar (which is called first on the first Monday of each month, and is called on the third Monday directly after motions

to instruct committees). If a bill is more controversial, but can command the support of two-thirds of the House, the rules can be suspended and the bill passed after the reading of the Consent Calendar on a first or third Monday, or during the last six days of a session. Wednesdays, on the other hand, are set apart for the call of committees, which may then bring forward their pet projects from the congested House and Union Calendars. Or an "anti-committee" sentiment in the House may gain preference on third Mondays for a bill held up in committee, by securing sufficient signatures to a motion "instructing" the committee to report.

With the exception of the last-named group, which raises questions of interest to be considered in the eighth and subsequent chapters, these devices for sorting legislative business are now settled and successful parts of the regular order. In 1908, however, before certain days had been thus assigned, Representative John M. Nelson said of the rules and rulings of the House that they were "so complicated, cumbersome, and unwieldy that fully three-fourths of the business is done outside of the rules—under suspension of the rules, by unanimous consent, or through riders on appropriation bills."[1] Since that time, these devices have found a permanent place in the *Manual,* and, paradoxically, the House rules by reason of these additions to their bulk have become less "complicated, cumbersome, and unwieldy."

The changes have been in the direction of certainty. They were intended to remove large classes of business from the caprice of the party leaders. Nevertheless, the leaders have penetrated these shields set up against their sudden thrusts, and have sometimes even used them for their own protection.

[1] Speech before the City Club of Chicago, Oct. 14, 1908; p. 11.

As Alexander expresses it, in the early days of Congress "when things got into a tangle it was easier to suspend the rules than to untie the knots."[1] But the device of suspension is no longer merely a refuge for incompetence.

It has certain unique advantages. The motion to "suspend the rules and pass" a bill is not divisible, so that it is voted up or down in exactly the same form in which it is made. Amendments to the bill may be included in the original motion, but may not be made thereafter. Furthermore, recognition to suspend the rules, being wholly in the discretion of the Speaker, must meet with his approval. In this respect, as in almost no other, he can play to his political friends. Then, too, debate is limited to 20 minutes to a side. There is no opportunity for the motion to recommit in order to perfect the bill if the House approves in principle but not in detail. This privilege is not denied even under the stringent regulations for the "previous question." Furthermore, the motion to suspend may not be postponed or laid on the table, and the vote, once taken, may not be reconsidered.[2]

Although since 1880 suspensions have been restricted to the first and third Mondays and the last six days of a session, there is still some element of surprise, inasmuch as the House does not know which bills, of the thousands before it, will be called up. The motion may even go so far as to take a bill still in the hands of a committee, discharge the committee, and pass the bill.[3] In the Sixty-second Congress, Mr. Norris would have liked to propose that no motion to suspend would be in order unless notice of such motion

[1] "History and Procedure of the House of Representatives," p. vi (1916).
[2] See House *Manual*, sec. 880.
[3] Hinds' *Precedents*, V, 6850.

had been printed in the Calendar of that day.[1] But he was given no opportunity to offer his proposal. The program of suspensions is still planned privately in conference with the Speaker.

In January 1921, there was a strong sentiment of protest in Congress against the policy of the Secretary of War, who was conducting a lively recruiting campaign after the cessation of hostilities, for the purpose of maintaining an Army of 220,000. Special inducements to enlist were offered, such as a bonus and one-year term. The Senate on January 14 passed a resolution reducing the size of the Army to 150,000. But the House Committee on Military Affairs, of which Mr. Kahn was Chairman, presumably after consultation with the War Department took the position that it would not be wise at that time to reduce the Army below 175,000. Indeed, a resolution which passed in the following Congress, setting the number at 150,000, was declared by President Harding to be impossible of execution, as he could not discharge enlisted men, and the normal expirations would take care of only one-half of the reduction called for.

Nevertheless, at the time of which we speak there was a strong sentiment in the House and Senate in favor of 150,000. It was known that the Committee on Appropriations favored that number, and as a matter of fact, two weeks later the Army appropriation bill as it passed the House carried provision for only 150,000 men (although in conference the number was raised to 165,000).

Knowing the sentiment of the House, Mr. Kahn, with the interests of the service at heart, moved on January 17 to suspend the rules and pass a resolution (H.J.Res.440) reducing the size of the Army to

[1] Rule 54 of the New York Assembly (1926) does require one day's notice before suspension of rules, except on the last day of a session.

175,000. There was no opportunity to amend the motion, or to recommit, and a negative vote would have seemed to favor the then 282,000 Army. Mr. Kahn's resolution was passed on January 17, and on the same day, as by agreement between the leaders of the two chambers, the Senate reconsidered its earlier action, and likewise voted for 175,000.

Representative Sisson of Mississippi, who favored 150,000, said regarding the tactics used:

"I do not think that the Chairman of the Committee on Military Affairs (Mr. Kahn) ought to have brought a matter of that much importance up under suspensions of rules, where the debate is limited to 20 minutes on the side, and let the country believe that this House has fixed the Army at 175,000 men when he knows that there is a majority of the Members on this side of the House who would have been glad to have voted for 150,000 or even less." [1]

Mr. Kahn, however, probably thought that this was the minimum of safety while the country was nominally still at war. In fact President Wilson vetoed the appropriation bill on the ground that 165,000 was not a sufficient force. In combatting the latter bill when it came before the House, Mr. Kahn justified his action of two weeks previous by saying that it would take until November 1 to reduce the Army even to 175,000.[2]

Suspension of the rules often is used to pass public buildings bills, rivers and harbors bills, good roads bills, and salary bills, because it is well adapted to prevent the orgy of amendment which is popularly known as "log-rolling". On this class of legislation, a Member is often apt to vote for proposals of expenditure in the districts of his friends, in the hope that they in turn will vote him a little "pork". But under suspension of the rules, this give and take is confined to the committee room. There it is transacted

[1] C. R. 66-3, p. 2390; Feb. 1, 1921.
[2] C. R. 66-3, p. 2453; Feb. 2, 1921.

with a regard, no doubt, to securing the necessary two-thirds vote, but by a smaller group of men who are, in most cases, disinterested judges of the merits of the proposals.

In the Sixty-eighth Congress, the salaries of postal employees were increased by a bill which at the same time raised the postal rates to provide funds from which to pay the increased salaries. Since the bill was passed under suspension of the rules,[1] Members had to consent to the new postal rates in order to confer the increased salaries, for which there was an unusually active propaganda throughout the country.

Another type of legislation for which suspension has frequently been called into play is veterans' legislation. The spirit of obligation to those who have participated in the nation's wars is shared by all to such an extent that the most extreme generosity, proposed by way of amendment, if amendment were allowed, would be difficult to defeat. Instead, responsible party leaders, working through the committee, draft a plan of reasonable benefits, with due regard to finances, and present it ready-made for the approval of two-thirds of the Members.[2]

Bills granting perquisites or increased salaries to Members are usually put through at the end of a Congress. At this time, in the final jam, they attract a minimum of attention from the "jingoist" press. The salary rate of Members was raised to $10,000., and of the Speaker and Cabinet officers to $15,000. on February 20, 1925, by means of a Senate "rider"

[1] C. R. 68-2, p. 3431; Feb. 10, 1925.
[2] The bill making extensive amendments to the World War Veterans' Act of 1924 was passed in this way, C. R. 69-1, pp. 9550-9571; May 17, 1926. Other instances of the use of suspension in this class of legislation were cited in a colloquy between Representatives Garrett (Dem.) and Newton (Rep.), *idem*, p. 9559.

to an appropriation bill. Use of the previous question cut short debate in the House. Two years later, on March 1, 1927, the House by suspension approved for itself an extensive new office building.[1] The authorization of such expenditures to increase the efficiency of Congress is usually voted without a roll-call. Members who themselves oppose on grounds of economy often hesitate to put their colleagues on record.

Protests against the passage of laws by the summary process of suspension have been many and violent. Although a two-thirds vote is required, this device seems to have called forth more bitter criticism from those opposing, than even the special order, by which the party in power can override the minority by a mere majority vote. Thus, when the first Calendar Wednesday rule was adopted, on March 1, 1909, it was proposed by Mr. Dalzell under suspension of rules. The Democrats had been strong advocates of a Calendar Wednesday. But most of them voted against the motion to suspend and pass, because the rule as proposed lacked certain elements of strength which they desired, and no opportunity was given under suspension to offer amendments. The bonus bills of successive Congresses after the World War were passed in this way, by reason of which James R. Mann on May 29, 1920 scathingly charged his party with "impotency and incapacity", inasmuch as it could not "bring in legislation and perfect it where it is subject to amendment."[2] Similarly, in the Sixty-ninth Congress Mr. McSwain of South Carolina was provoked to strong protest against this method of passing bills. In the case of the Elliott Public Buildings bill,

[1] This bill failed, however, to receive the attention of the Senate, which was held in the grip of a "short" session filibuster.
[2] C. R. 66-2, p. 7927.

he pointed out that most of the money would be spent in six states, and charged that the "loaded dice" of the bill were worse than the "pork" which was sought to be avoided through the process of suspension.[1]

The time for employing suspension of the rules is a matter calling for astute judgment. The Democrats, when in control of the Fiftieth Congress, tried to pass a rivers and harbors bill in this way and failed, because 32 of their own number joined 68 Republicans and two Independents in opposition. The final vote of 134 to 102 was less than two-thirds.[2] The avowed purpose of putting the measure forward under suspension had been to hurry it to the President. But the consequent rejection of the bill, when a favorable majority could have been secured, caused a delay of two weeks before the bill was put into a form acceptable to two-thirds of the Members. Similarly, on February 6, 1922, Mr. Cramton of the Committee on Appropriations moved to suspend the rules and pass a bill putting $100,000. in the hands of the Secretary of the Interior for the relief of destitute Indians. But his motion failed to receive the necessary two-thirds. The vote was 155 "yeas", 103 "nays". There was a feeling that the relief agencies should use surplus army supplies, which were then being offered for public sale.

It is often a matter of great nicety to judge whether a suspension can succeed. If it cannot, and the leaders sincerely desire the passage of the bill, they will wisely use a special order by the Committee on Rules, which requires only a majority vote.

Three attempts to pass bills by suspension failed in the "short" session of the Sixty-ninth Congress.[3]

[1] C. R. 69-1, pp. 4033-4; Feb. 15, 1926.
[2] C. R. 50-1, pp. 3017-23; Apr. 16, 1888.
[3] One of these motions to suspend, on March 2, 1927, was for the benefit of a bill sponsored by the Republican leaders, for the apportion-

During the preceding "long" session, however, the leaders judged their support so accurately that no motion to suspend the rules failed. This record of careful management was achieved despite the fact that the Republicans could not rely upon their partisans alone, who did not compose two-thirds of the Membership.

The Consent Calendar also grew out of a habit of long standing, that of passing bills from the House or Union Calendars, after calling them up by unanimous consent. The creation of a special Calendar, which is called automatically on first and third Mondays, and on which Members are free to place bills by simply filing notice with the Clerk, was a cardinal feature of the Fitzgerald rules of 1909. Contrary to the case with regard to suspensions, the distinct purpose was to take discretion away from the Speaker. Theoretically he had possessed only the same right as any other Member to object. But in practice this objection by the Speaker took the form of refusal to recognize a unanimous consent request unless he had approved it in advance. Members rebelled against the necessity of going, as they said, "hat in hand", to the Speaker's office before they could so much as voice their requests.

ment of Representatives under the 1930 census. This duty had been neglected by Congress under the 1920 enumeration. Nevertheless, the Committee on the Census had voted not to report the proposed bill, and the House refused to give even a majority in favor of overriding the Committee. Members felt that legislation as applied to 1930 was premature. The supposedly permanent features of the bill, fixing the size of the House at 435 Members, and delegating the actual apportionment to the Secretary of Commerce, swelled the ranks of the opposition. To be sure, the method of "equal proportions" was specified in the bill, and was pretty generally favored over that of "major fractions", which had been the basis of the 1911 apportionment. But there was fear that a dangerous discretion would lodge in the Secretary under the Fourteenth Amendment, by which he might reduce representation of certain states on the ground that the right to vote had been denied to some of their citizens.

The Calendar for Unanimous Consent, as it was originally called, has shown itself well able to take care of the public business to which no serious objection is raised. From the time of its establishment in the Sixty-first Congress, through the Sixty-ninth Congress, 5334 entries were made upon that Calendar. Of these entries, nearly 97 per cent, or an average of 573 in each Congress, came before the House, and the bills either were passed or stricken off by objection. Only three per cent on the average were left on the Calendar at final adjournment, and in no Congress did so many as 10 per cent of the entries fail to be reached.

At first, one objection killed the entry for a whole Congress. In this way a bill to incorporate the Carnegie Endowment for International Peace failed of passage in the Sixty-first Congress because of an objection by Mr. McDermott of Illinois, despite the pleas of Republican leader Mann, and of Mr. Parker, in the bill's favor.[1] Sometimes, too, innocent bills were slaughtered by a petulant Member. Mr. Hardwick of Georgia became disgruntled on January 16, 1911 because he was not allowed to extend his remarks. In reprisal, he objected to most of the bills which were called up during the remainder of the day. Thus on the only Unanimous Consent day in January of that year, 14 bills were rejected, and only three were passed.

In the next Congress, accordingly, on April 4, 1911, the Democrats revised the Fitzgerald rule in such a way as to make it possible to restore to the Unanimous Consent Calendar a second time a bill to which objection had been made. At the beginning of the Sixty-eighth Congress, a further revision provided that when a bill came up for the second time, three objections should be required to defeat it. In

[1] C. R. 61-3, p. 2086; Feb. 7, 1911.

this way, a bill placing prohibition enforcement officers under the Civil Service was passed by means of the Consent Calendar, as it came to be called. The bill had been objected to once, and there were two objections when it came up again, but a third Member could not be found, even among those of pronouncedly wet sympathies, who would thwart the program of the chief enforcement officer in this respect.[1]

There are many bills disposed of on a day when the Consent Calendar is called, whereas there are almost never more than two or three bills passed on the same day by suspension. The latter are of course controversial matters, and apt to be of more importance, but some subjects of national concern are disposed of through the Consent Calendar. For example, on Monday, April 5, 1926 it was the means of passing 55 bills. 19 were bridge bills, of which 18 were passed *en bloc*. Many of the remainder had to do with Indian affairs, but some laid down rules of administration which were general in their application, while others amended the immigration act or the judicial code. Seven were objected to, of which one received three objections, as required the second time. After the Speaker began recognizing motions to suspend, two bills only were discussed and passed, to wit, a Spanish War pensions act by the vote of 368 to 0, and a bill extending the Maternity act to seven years, by a vote of 218 to 44.

Several amendments to the postal laws, passed without objection during the call of the Consent Calendar on December 20, 1926, were bills of the type for which this Calendar is particularly useful. The 2 cent rate imposed by the act of 1925 on post cards had failed to bring in the additional revenue expected.

[1] C. R. 69-1, p. 6310; Mch. 29, 1926, unbound *Record*. The objections were deleted from the permanent, bound volumes (p. 6521).

Similarly, the new rate on transient second-class mail matter had proved higher than the traffic would bear. The Consent Calendar provided a way by which immediate relief was gained where the demand for it was unanimous, at a time when there was poor prospect, during a "short" session, for a general revision of the postal laws.

The Consent Calendar is not intended for controversial matters, which may, notwithstanding, be placed upon it. The responsible leaders have a duty to prevent important measures from slipping through in this manner without proper scrutiny. On this ground, Mr. Begg, assistant to the Floor Leader, in company with Messrs. Dyer and Cullen, objected on March 29, 1926 to the consideration of a bill to provide for the disposition of asphalt, gilsonite, elaterite, etc. on the public domain. Similarly, on May 3, 1926 Mr. Begg objected to a bill winsomely sponsored by Mrs. Rogers of Massachusetts, which would have extended the presumption of service connection more liberally to veterans of the World War seeking care and training because of disability. When the same bill was brought up for the second time on June 7, he again objected, as did also Messrs. Johnson of Washington, and Madden, because legislation on the same subject was coming up in the form of a committee bill (which was enacted before the close of the session.)

While the Speaker is powerless to prevent a bill from coming up on the Consent Calendar, he has the same privilege as any other Member, of objecting; and he may prohibit unanimous consent requests to pass bills at other times, unless they gain his approval on grounds of urgency, or are endorsed by his political friends. On February 18, 1926, when Mr. Barkley (Dem.) of Kentucky asked to pass a bridge bill by

consent, it not being Monday, Speaker Longworth said:

"The Chair would like to state that he feels it would be a wise policy on the part of the Chair to, as a general rule, refuse recognition for the consideration of bills which are either on or have a right to be on the Consent Calendar. He thinks such recognition should only be given when it is evident a very distinct emergency exists which might involve a loss, perhaps a financial loss, or might cause a delay which would be prejudicial to the public interest." [1]

In this case, he was convinced that an emergency existed. Also, on Tuesday, April 13, 1926 he permitted the passage by unanimous consent of a bill introduced by Mr. Tilson of Connecticut, the Floor Leader, and called up by Mr. Moore of Virginia, which authorized certain military organizations of Hartford, Connecticut, and Richmond, Virginia to visit France, England and Belgium during the following month. Likewise, on Thursday, June 10, 1926 a bill amending the Panama Canal Act was considered and passed under a unanimous consent request by Mr. Tilson, in lieu of a special rule then pending.

"Calendar Wednesday" is another apt invention, having been created to provide a time for bills of medium importance to which more than three Members might object, yet which are not of sufficient moment to call for a special rule. It revived a call of committees, which had ceased to take place under the defunct "morning hour". Not long after the adoption of Calendar Wednesday in 1909, Mr. Haugen stated that in eight years prior thereto "only two or three bills have been called up by the committees and passed by the House." [2] The terms of the new rule, however, protected the call of committees by providing that no other business should be in order on Wednesdays.

[1] C. R. 69-1, p. 4226.
[2] C. R. 61-2, p. 8421; June 17, 1910.

The influence of the House leaders on Calendar Wednesday business is mostly indirect, working through the chairman, or a party majority of the committee. No one can call up a bill unless he is authorized to do so by the committee having the call. On Wednesday, December 15, 1920, Mr. Flood (Dem.) of Virginia tried to call up a resolution "expressing the sympathy of the Congress of the United States with the aspirations of the Irish people for a government of its own choice." Although the call rested with the Committee on Foreign Affairs, the Speaker ruled him out of order, as he was not Chairman of that Committee. Nor did he claim to be authorized by that Committee to call up the resolution.

Chairman Haugen of the Committee on Agriculture called up a bill to pay the Watson sugar claim, which he personally opposed. Although a bi-partisan majority of his Committee had voted a favorable report, he was able to carry the House with him in defeating the bill. This was despite the fact that he was supported on the record vote by only three of the Committee Republicans, and opposed by eight, who wished to allow the claim.[1]

The only way in which party leaders can affect Calendar Wednesday directly is by dispensing with it. In this, they must be supported by a two-thirds vote. Such action, however, usually takes the form of unanimous consent, at the request of the Floor Leader.

Such criticism as is still heard of Calendar Wednesday, after several perfecting changes,[2] has to do mostly with the fact that all of the committees are not reached in the call.[3] In the two years of the Sixty-

[1] April 14, 1926.
[2] See *supra*, Intro., pp. 5, 13-14.
[3] See statements by Representative Luce on the floor of the House, C. R. 69-1, p. 879; Dec. 15, 1925; and before the Committee on Rules, Jan. 4, 1924, and Apr. 8, 1926.

ninth Congress, only 14 of the 61 committees were reached. This was partly because 20 of the 38 possible Wednesdays were not utilized. Calendar Wednesdays were dispensed with for almost two months at the beginning of each session. In the second session, only parts of two Wednesdays in all were saved for this type of business, and only two committees were called.

There are no restrictions upon leaders to keep them from substituting other business for the Private Calendar on Fridays (or, in almost the same way, for District of Columbia business on second and fourth Mondays), provided they can command majority support, expressed or implied. They can, instead, go into Committee of the Whole to consider revenue or appropriation bills, which have higher privilege than the Private Calendar. Or a special order may devote Friday to other business. It is highly proper that the House should be free to neglect its business in private bills, which Representative Luce has aptly styled "exceptions to laws",[1] when the state of public business is at all urgent.

Recently the influence of the Floor Leader over the Private Calendar has been most marked in restricting the sort of bills which shall be considered. Because of the congestion of the Calendar, Mr. Tilson has sometimes secured unanimous consent agreements that only the bills which are unobjected to should be considered. On June 10, 1926 he extended the scope of business which might be brought up by securing agreement that on the next day bills objected to once should be considered again, provided there were not three objections. Thus he applied the principles of

[1] "Congress: an Explanation," p. 55 (1926).

the Consent Calendar to bills on the Private Calendar, which ordinarily operates on the principle of a majority vote. As a result, a new record was set of 119 private bills passed in one day.

CHAPTER VIII

THE HOUSE AND ITS COMMITTEES

THE discharge of committees by the House is the dividing point between those who advocate, and those who oppose, more democracy in the rules of procedure. During the past 15 years, there have been five distinct experiments with discharge rules in the House of Representatives, and that which it now has is not a final solution of the problem. Since practical politicians are so closely divided on the merits of the question, it will make a good focal point for our approach to the subject of party control, and the extent of its usefulness in the House.

In order to understand the efforts which have been made to place a definite machinery for the discharge of committees in the rules of the House, it is necessary to note the situation as it would be in the absence of such a rule. By virtue of their origin and functions, committees are in theory the servants, and not the masters of the body which creates them. The motion, therefore, to discharge a committee from any task delegated to it is perfectly admissible, under general parliamentary law, and may be carried, like any other motion, by a majority vote. This means is open, in most legislative bodies, to discharge committees, even though there be no specific rule on the subject.

But we have already seen in chapter VI that in the House of Representatives a motion which does not have special privilege has virtually no privilege at all. Thus the motion "to recess", although correct

under general parliamentary law, has fallen into disuse in the House. It is practically impossible to make this motion, not because it is debarred, but simply because the rules do not include such a motion among privileged matters. It may be made, if the mover can gain the floor, but he is subject to be swept off his feet by a single demand for "the regular order." Something else is sure to be the privileged business of the House.[1] In a similar way before 1910, the motion to discharge a committee, not being accorded special privilege in the rules of the House, had come to be practically impossible except by unanimous consent, by suspension of the rules, or by a special order from the Committee on Rules. We have seen that the last two means are well under the control of the party leaders.

Even to-day the motion to discharge a committee is occasionally admitted, not under the provisions of the discharge rule, but is adopted by unanimous consent. Thus on February 18, 1926, Mr. Moore of Virginia secured the discharge of the Committee on the Library from the unimportant resolution S.J.41, reappointing a member of the Board of Regents of the Smithsonian Institution. The resolution was then passed by the House. Mr. Moore was not even a member of the Committee which he moved to discharge, but the Speaker admitted the motion, and there was no objection.

In a few matters, the motion to discharge has been given privilege under the practice of the House. Thus a correction may be made "in case of error of reference", when the motion to discharge is permissible "by unanimous consent, or on motion of a committee claiming jurisdiction, or on the report of the commit-

[1] At the close of the day on March 3, 1927, it was necessary to use a special order from the Committee on Rules to make in order a motion "to recess" until the next morning.

tee to which the bill has been erroneously referred."[1] There is also a class of resolutions, asking for information from the executive departments; and since this information is considered to be for use in framing legislation, clause 5 of rule XXII provides that a committee to which such a resolution is referred shall report within one week. If the committee does not so report, a motion to discharge it is privileged.[2] But the privilege is lost in case the resolution calls for more than mere information, as when Mr. La Guardia's resolution on the subject of monopoly in the baking industry was held by the Speaker to call for an opinion from the Attorney General.[3] A motion to discharge a committee from the consideration of a resolution affecting the personal privilege of a Member or of the House is almost always in order, as is likewise true with regard to a vetoed bill.[4] Similarly, the new rule requiring elections committees to report within six months would undoubtedly make them subject to discharge after that time. There has long been doubt whether privilege could not be claimed also for any matter, such as the census, upon which there is a clear constitutional mandate. But the weight of many precedents supporting such privilege was overthrown on April 8, 1926 when the House itself rejected Mr. Barbour's claim of constitutional privilege to bring a reapportionment bill out of committee.[5]

The exceptions which have been noted touch merely the fringe of legislation. Nearly every bill and resolution of real importance is beyond the reach of a private Member, or even of an ordinary majority, after it "crosses the parliamentary bridge of sighs to dim dungeons of silence"[1] in the committee room.

[2] From clause 3 of rule XXII.

[3] See, however, the instance on February 28, 1923 (*supra*, pp. 87-88) for the possibility that such a motion may be forestalled by another of equal privilege. In such a case, the matter of recognition is within the discretion of the Chair.

[4] C. R. 69-1, p. 3805; Feb. 11, 1926.

[5] See Digest of Rules and Practices of the House of Representatives (prepared by Asher C. Hinds) in the House *Manual* of 1908, pp. 480-1. Or the *Manual* of 1925, secs. 105 and 399.

[6] *Supra*, p. 24.

As early as 1884, Mr. Turner of Kentucky proposed a rule by which, when a bill had been 30 days in a committee, the Member who introduced it might, on any Monday, move to bring the bill out and dispose of it forthwith. According to Mr. Turner's own statement, he had offered the same resolution at the beginning of four Congresses, but it had never been reported by the Committee on Rules. He now offered it as an amendment from the floor. But Thomas B. Reed opposed the Turner amendment, although he was at the time in the minority. "With the principle at the bottom of this resolution," he stated, "I have entire sympathy." But he felt, under practical difficulties then existing, that the House could hope to do only about eight per cent of its business, and he objected to the fact that the resolution would have made "nine-tenths of the business of this House" privileged "solely because a committee does not recommend it."[2] The amendment was defeated by a vote of 56 to 115.

A quarter century later, the principle of a discharge rule gained new support by being linked with the popular revolt against Cannonism. On January 24, 1908, Representative Shackleford of Missouri stirred many of his colleagues to resent the heavy hand of the Speaker on all the business of the House and upon the committees. The speech, which was widely circulated throughout the country, set forth in plain language the Cannon philosophy. The Speaker had come to assume that he was "responsible for everything that

[1] Wilson, "Congressional Government," p. 69 (2nd ed., 1885).

[2] C. R. 48-1, 964; Feb. 7, 1884.

passes this House", and to hold that there was only one legitimate way of dissent, the extreme and untried course of removing the Speaker from office. Even a two-thirds majority, which could override a President's veto, could not gain recognition to suspend the rules or to discharge a committee without the Speaker's consent. "Has it come to pass," queried the Missourian, "that the Speaker of the House of Representatives has brought us to the level of the Russian peasants, who have no privilege but that of revolution?" [1]

Bourke Cochran of New York, a peer of Democratic speechmakers, came out in favor of a discharge rule on January 7, 1909. He cited as a bill which was held in committee in order to secure its defeat his "proposition to put wood pulp on the free list". There "could not have been five votes recorded in this House" against it, he asserted. Such matters could not come up "because under the procedure of the House not merely the Committee on Rules, but all the other committees, are sitting upon them with an effect of weight and inertia that is absolutely immovable. (Laughter) There is not a gentleman here . . . who cannot go back to his constituency tomorrow and protest his earnest enthusiasm for my measures and blame his refusal to vote for them upon the procedure of the House. Now that is an abuse and a serious one. Anything that can be interposed between the discharge of a Representative's duty and full knowledge by his constituents of how he discharged it is a grave abuse upon the representative system." [2] He cited also the stifling of his measure for the publicity of campaign expenses.

The situation was such two months later that Mr. Fitzgerald, another Democrat from New York, might have included a provision relating to the discharge

[1] C. R. 60-1, p. 1087.

[2] C. R. 60-2, p. 610.

of committees among the Fitzgerald compromise rules, which were adopted by the House. But Mr. Fitzgerald did not then favor a discharge rule. He defended the omission by saying:

"There are certain legislative bodies that are odious to the American people. Every one which enjoys an unenviable reputation has in its rules some provision which makes privileged a motion to discharge a committee from the consideration of a bill." [1]

The plea for a discharge rule was renewed during the "Revolution of March, 1910" by Representative Hamilton Fish (Republican) of New York. Mr. Fish had been unable to persuade the Cannon-controlled Committee on Rules to report his resolution that the Committee on the Post Office and Post Roads inquire into the question of establishing a parcels post system, and report within 30 days. Mr. Fish had previously been Speaker of the New York Assembly. When asked whether he did not believe that an "elected majority" should control the House in ordinary legislation, he replied:

"Mr. Speaker, I do so believe, when they act in the interest of the people, and the whole people. (Applause.) . . . Each individual Member on this floor is to be the judge according to his own conscience." [2]

In June, under favorable circumstances, the demand for a discharge rule became more insistent. Mr. Hughes of New Jersey had introduced a bill to establish the eight-hour day on all government contracts. The Committee on Labor, of which he was a member, had held hearings upon the subject. But he could not get it to take any action. "It is my belief that if a Committee meeting were called," he told the House on June 4, "even the eight-hour bill would be unani-

[1] C. R. 61-1, p. 24; Mch. 15, 1909.

[2] C. R. 61-2, p. 3301; Mch. 17, 1910.

mously reported." The subject was before the House in the form of an amendment proposed to be added to a pending appropriation bill. The amendment had been ruled out, however, on correct technical grounds, as changing existing law. Many Members who favored the proposal voted to sustain the decision. But in so doing, they stressed the need for some means by which a committee could be prevented from "shutting up forever . . . a bill which a majority favor." "We are going into a campaign," added Mr. Cooper of Wisconsin, "and the people ought to compel every man who announces his candidacy for Congress in the next election to declare whether he is or is not in favor of and willing to vote, in season and out of season, for an amendment of these rules which will prohibit the stifling of legislation in any committee. (Loud applause)" [1]

Mr. Underwood warned the Speaker that revolutions against the rules would continue so long as the will of the majority was thwarted. One proposal for a discharge rule, he stated, had been before the old Rules Committee (previous to March 19, 1910), and several such resolutions had been presented since Rules had been enlarged and divorced from the direct influence of the Speaker. The Democratic members of the Committee, he announced, favored such a rule.

Some of the new Republican members of the Committee, for instance, Mr. Smith of Iowa, likewise approved the discharge principle. On June 15 there was a four-hour session of the Committee. Resolutions then before it by Mr. Fish, by Mr. Sherley of Kentucky, and by Mr. Madison of Wisconsin were studied. In the end, a new draft by Champ Clark, the ranking Democratic member, became the basis for the rule which Chairman Dalzell reported two days later.

[1] C. R. 61-2, pp. 7410-11.

But Mr. Clark made it plain that "there are some suggestions of every member of the Committee on Rules in the rule." He specifically stated that Mr. Underwood added the last section.

After one hour of debate (six pages in the *Record*), Mr. Smith of Iowa moved the previous question, shutting off amendments. The resolution was then passed, 201 "ayes" rising and no "noes". Mr. Rucker's demand for a record vote found only five supporters. This number fell short of the necessary one-fifth required by the *Constitution*.

The first discharge rule, thus adopted on June 17, 1910, was as follows:

> Rule XXVIII, clause 4. Any Member may present to the Clerk a motion in writing to discharge a committee from further consideration of any public bill or joint resolution which may have been referred to such committee. All such motions shall be entered in the Journal and printed on the Calendar under an appropriate heading. Immediately after the Unanimous Consent Calendar shall have been called on any Monday, it shall be in order to call up any such motion which shall have been entered at least seven days prior thereto. Recognition for such motions shall be in the order in which they have been entered. Such motions being submitted to the House shall be seconded by a majority by tellers. If a second be ordered, debate on such motion shall be limited to 20 minutes, one-half thereof in favor of the proposition and one-half in opposition thereto. Such motions shall have precedence over motions to suspend the rules and shall require for adoption an affirmative vote of a majority of the membership of the House.
>
> "Whenever such a motion shall prevail, the bill so taken from the consideration of the committee shall thereupon be placed upon its appropriate calendar, and upon call of the committee from which any bill has been so taken it may be called for consideration by any Member prior to any bill reported by said committee at a date subsequent to the discharge of said committee."

Mr. Dalzell stated that the new rule was "purely experimental". Such former advocates of a discharge rule as Messrs. Fish and Norris accepted it as "a long step forward", and believed that it was brought in "by the Committee on Rules in good faith and

passed by the House in good faith." But Mr. Rucker of Missouri was less easily persuaded. "Let me say to my good friend from Missouri (Mr. Clark) I do not believe we are going in the direction we started in on the 19th of last March," he said. "Why do I doubt? Because the gentleman from Pennsylvania (Mr. Dalzell) is going in the same direction you are (laughter), and because I see the gentleman from Iowa (Mr. Smith) . . . and the leader of the Republican forces (Mr. Payne) going in the same direction."

As a matter of fact, the new rule was difficult of operation because it required an extraordinary majority to discharge a committee. Mostly the House acts by majority vote of those present and voting. The requirement of "an affirmative vote of a majority of the Membership of the House" would often equal practically a unanimous vote by those present. The majority principle was correct, but the proper application of it remained, and still remains to be perfected. Second, the new rule applied only to "bills or joint resolutions". As pointed out by Speaker Cannon on January 9, 1911,[1] it could not be extended to include simple "resolutions", such as a proposal before the Committee on Rules for an investigation, for a special order, or for a change in the rules.

But the discharge rule in its first form never had a serious trial. It was open to perversion in a number of ways, and James R. Mann (Rep.) of Illinois, the most clever parliamentarian in the House, set out to pervert it. He had not voted either for or against the rule. Although later accused of having put "jokers" in it, he was probably in no sense the father of the rule. But from the first he aspired to be its

[1] C. R. 61-3, p. 685.

executioner. He himself boasted: "As soon as it was reported from the Committee on Rules I went and prepared a motion which would demonstrate its utter absurdity."[1]

On June 20, 1910, the first suspension day following the adoption of the rule, no motions could, of course, have been seven days on the Discharge Calendar. Congress adjourned on the 25th.

The first opportunity in the third session of the Congress came on December 19. There were 40 motions already on the Discharge Calendar. After the completion of unanimous consents, the Speaker ruled that the Discharge Calendar need not be considered, unless some Member called up one of the motions thereon. Mr. Mann then exercised this privilege by moving to bring out of committee a bill "to codify, revise, and amend the postal laws of the United States". He had seen to it that his motion was number one on the calendar, so that he could forestall any one else from moving to discharge a committee. He now insisted that this lengthy document be read in full. Attempts of others to dispense with further reading by suspending the rules, were held to be not in order. Parliamentary tangles developed. There were quorum calls, a motion to adjourn, and accusations that some one was directing the Clerk to read slowly. Only a few Members remained. When the House adjourned at 5:55 P.M., it appeared that the reading of the bill, if continued, would consume likewise the whole day on the next occasion when the Discharge Calendar would be in order.

On the first Monday in January, Congress was in its Christmas recess. On the 5th, 107 discharge motions were filed "by one Member". Noting this fact on the

[1] C. R. 61-3, p. 680; Jan. 9, 1911.

9th, Mr. Fitzgerald asked in vain for a special suspension day on the 10th, before the 107 should have been on the Discharge Calendar the necessary seven days. Mr. Mann countered with a proposal that the discharge rule be dispensed with for the rest of the session, unless "the House wants deliberately to take time on that sort of business as an education to the next House."

On the same day, the Rules Committee had discussed what amendments should be made in the discharge rule, to prevent any one from instituting a filibuster under it. The Democrats had been returned to power in the November election, and Mr. Underwood promised that if the present Republican Committee did not change the discharge rule, "the Rules Committee of the next Congress will amend it so that it will be effective." [1]

The Discharge Calendar was again in order on Monday, January 16. Representative Hull tried to head it off by the privileged motion that the House resolve itself into Committee of the Whole to consider an appropriation bill. But Mr. Fitzgerald proposed to discharge a committee, and claimed precedence for his motion. Under these circumstances, Mr. Mann favored the Hull motion, but insisted that if any motion were to be called up from the Discharge Calendar, it must be his postal code, which was first on the list. The Speaker ruled in favor of Mr. Hull. But the House perceived that such a ruling would allow the Discharge Calendar to be sidetracked at any time, and reversed the decision (126 to 146).

The Mann filibuster was successful, however, even in defeat, for these proceedings used up the whole day, and the House thereafter adjourned. For the remainder of the session, the House, as though by tacit

[1] C. R. 61-3, p. 681; Jan. 9, 1911.

agreement, skipped the Discharge Calendar, and each time that it was in order, proceeded to the consideration of other business.

The discharge rule was changed on April 5, 1911, as Mr. Underwood had said it would be, by the Democrats. The terms of the revised rule protected a committee by requiring that 15 days must elapse after a bill had been referred, before any Member could move the committee's discharge. The Democrats also repaired the breaches which had been made in the old rule by Mr. Mann. Bills on the Discharge Calendar were to be read by title only. The rule was not to apply to bills with titles over 100 words in length, and no Member was allowed to have more than two motions at one time on the Calendar.

Mr. Mann, now minority leader, paid lip service to the discharge principle. "In every set of rules adopted by a legislative body," he said, "it is important that there should be a method by which the majority of the Members can bring before the legislative body for consideration and action any proposition which the majority desires. . . . This House cannot afford to be held up by the small number of Members constituting a majority of one of its committees." But he admitted that he "undertook to show the futility" of the first rule, and added that "the rule in the last House was no more a joke than the rule which is now proposed. . . . I may undertake to demonstrate if I choose, and I make no promises that I will not choose, to show the utter absurdity, not to say idiocy, of the rule that is now proposed. (Applause on the Republican side)" [1]

Mr. Mann's resources for putting the rule into ill repute were in fact more ample since the Republicans

[1] C. R. 62-1, p. 78; Apr. 5, 1911.

had become a minority. He was now free to embarrass the party in power. The Democrats on April 1 had determined in caucus to narrow the program of the special session to certain specified subjects, and their Members on committees were directed not to report any other measures. After doing their best to mend the discharge rule, therefore, the Democratic leaders managed so that the new rule did not come to a test during the five months of the special session. Until June 19, the House adjourned over week-ends until Tuesday. On that day, and again on August 7, when there were evident intentions on the part of Members to call up motions on the Discharge Calendar, Mr. Underwood, the Floor Leader, each time moved that the House adjourn. This motion was both times successful, and forestalled any action on the discharge of committees. On August 21, the last possible Monday of the session, the Rules Committee presented a special order for a tariff reduction bill. This special rule, as a sort of "rider", provided that no business be in order on that day under the Discharge Calendar.

Under the normal conditions of the "long" session, however, Mr. Mann resumed the attack. On Monday, January 15, 1912, he called up 11 motions to bring out of committee important bills which the Democrats were not ready to report. The subjects of these measures, with the teller votes by which a "second" was refused, were as follows:

Physical valuation of railroad properties (71-101)
To regulate hours of work of postoffice clerks (76-88)
Pensions to soldiers confined in so-called Confederate prisons (72-89)
Legal rights of laborers before the Court of Claims under the national eight-hour law (63-90)
Penny postage rate for "drop letters" (39-75)
Increased pensions for Civil War dependents (62-130)
Creation of a tariff board (69-111)
To fix the price of gas in the District of Columbia (42-102)

Additional compensation to R.F.D. carriers (62-94)
Compensation for injuries to employees of the United States (50-88)
Second-class mail privileges to publications of benevolent societies (45-74)

Undoubtedly Mr. Mann witnessed the defeat of these motions with great glee. A few days later, Mr. Campbell, one of his Republican colleagues, accused the Democrats of "reaction", since they had voted against taking up nine bills which they had declared on the stump they favored.[1] After the vote on the last of these motions, Mr. Mann made a point of no quorum, and, upon motion of Mr. Underwood, the House adjourned.

After this day's adjournment, the discharge rule remained for ten years a "dead letter",—until the session following Mr. Mann's death.

On February 3, 1912, Mr. Henry from the Committee on Rules presented an amendment to the rules which relegated the Discharge Calendar to third place, following both the Unanimous Consent Calendar and motions to suspend the rules. This proposal, which was carried under spur of "the previous question", received the support of Mr. Underwood and other Democratic leaders. Mr. Garrett frankly admitted that the change in the rule had become necessary "to do the business of the House (Laughter)", because the rule was used "not in good faith. . . . to carry on a facetious filibuster"; in short, that it was abused.

As a double safeguard, in the next Congress, the discharge rule was suspended on June 3, 1913, for the duration of the special session. In the December session, to make sure that his victim would not come to life, Mr. Mann again saw to it that the Discharge

[1] C. R. 62-3, p. 1687; Feb. 3, 1912.

Calendar was "choked" with motions. Although he was prevented by the revision of 1911 from offering more than two himself, he got some of his friends to file motions on bills in which they had little or no interest.[1]

A sentiment in favor of a workable discharge rule survived. Some motions to discharge committees continued to be filed, even though there was little chance that they could be called up for action. Their number, however, steadily decreased, as follows:

Congress	Discharge Motions Filed
61	223
62	82
63	68
64	37
65	34
66	10
67	10
68	4[2]
69	4

On Monday, December 18, 1922—the identical day on which the House arranged the customary eulogies for James R. Mann—, Representative Hayden surprised the Membership by moving to take up number one on the Calendar of Motions to Discharge Committees. "I have been here for ten years," he explained, "and I have never seen the Calendar of Motions to Discharge Committees brought into action. I

[1] Mr. Lynn Haines conducted a personal investigation into this incident at the time, and published the findings in his book, "Your Congress," p. 89 (1915).

[2] The fact that there were not more motions recorded in the Sixty-eighth and Sixty-ninth Congresses is to be explained by the higher standards set in the new rules (*infra*, pp. 152 and 164). A motion would not ordinarily be filed unless the proponent were willing to undertake the task of securing 150 and 218 signatures, respectively. In the Sixty-eighth Congress only one, and in the Sixty-ninth none of these motions received sufficient signatures to be placed on the Calendar.

want to see what will happen if my motion is considered."

"It is an entirely novel proposition," commented Speaker Gillett.

Unfortunately, however, for the gentleman's curiosity, the House by a vote of 60 to 90 refused to second the particular motion (relating to a commerce bill) which stood first on the Calendar.

But a strong sentiment had already crystallized which was destined to bring the whole subject again before the House at the beginning of the next Congress. The leaders in the Sixty-seventh Congress were unusually capricious, and the overgrown Republican majority was inclined to be independent. Under these conditions, there were a number of bills which particularly gave to their advocates a feeling of provocation against the committees which failed to report them.

There was the Bursum bill (S. 1565) to retire emergency officers, which slumbered in the Committee on Military Affairs. Mr. Kahn, the Chairman, had gone to California, and the Committee, lacking a quorum in its meetings, could report no bills. Regarding this bill, Mr. Johnson of South Dakota, who became Chairman of the Veterans' Committee in the next Congress, afterwards said, "We were certain that two-thirds of the membership of this House desired to see it come out of that Committee and would have voted for its passage."[1] He actually had a petition signed by 127, which he tried to put in the *Record*.

Then there was the Woodruff-Johnson resolution for an investigation of the Department of Justice, which could not be gotten from the Committee on Rules. The investigation had to be undertaken finally

[1] C. R. 68-1, p. 995.

by the Senate. Mr. Moore of Virginia wanted the same Committee to report his resolution to investigate the retirement of 30 employees from the Bureau of Engraving and Printing, and he later pointed out that the Secretary of the Treasury, who subsequently looked into the matter, found that "gross injustice was done." [1]

There were also two measures sponsored by Congressman Hamilton Fish, Jr., of New York, whose father urged the necessity for the first discharge rule in 1910. Mr. Fish had introduced a resolution to investigate the Veterans' Bureau, but was told that for party reasons it could not be reported out of the Committee on Rules.[2] He had to take it to a Member of the Senate, who introduced the identical resolution. It was passed with despatch in that body. Subsequent events have shown that conditions in the Bureau justified such an investigation.

But the measure which perhaps more than any other called attention to the need for a workable discharge rule was his bill H. R. 8062, introduced August 3, 1921, to increase from $20 to $50 a month the pay of attendants of blinded, legless and armless veterans. The Committee on Interstate and Foreign Commerce, having overhauled the war risk insurance legislation and secured the passage of a bill about a year before, was not inclined to reopen the subject. But there was a keen feeling on the part of some Members that, though the possible beneficiaries of the bill were only 336, a greater measure of justice was due them without delay. It was true that in the consideration of the second Sweet bill some such provision had been voted down by the House. But this was thought to have been because the three amendments which were then

[1] Hearings before the Committee on Rules, December 20, 1923, p. 5.
[2] See his later testimony, C. R. 68-1, p. 1053; Jan. 16, 1924.

offered, one of which set the pay at $100, "got so mixed up that they defeated themselves." [1]

During the first session, and six months of the second session, the advocates of this measure tried in vain to secure action by the Committee. They consulted the discharge rule and found that it was unworkable. The method of calling a party caucus to instruct a committee had been tried in an attempt to create a veterans' committee, but had been of no avail. It was difficult for private Members to get a quorum of the party together. Soldier organizations brought pressure to bear on the Committee, and Mr. Fish wrote asking for action on the bill. "In answer, however," Chairman Winslow wrote on May 27, 1922, "I am obliged, in the face of the circumstances existing, to tell you that I can add nothing to my statements made to you verbally several times, to the effect that as yet the Committee has not considered and now does not seem likely to consider, bills of this character."

But pressure was brought to bear from within by members of the Committee, and the bill was at last reported with an amendment on June 20th. A week later it was favored by a special order from the Committee on Rules. In presenting the special order, Mr. Snell said: "The bill has the unanimous support of the Committee on Interstate and Foreign Commerce, and is unanimously reported from the Committee on Rules, and I believe it will receive the unanimous support of the Members of the House." [2] The bill did, in fact, pass both the House and the Senate, and became law in December.

The discharge rule of 1924, like that of 1910, was a forced concession on the part of the Republicans to

[1] C. R. 67-2, p. 9535.
[2] C. R. 67-2, p. 9532; June 27, 1922.

individualists within their ranks. The composition of the Rules Committee again became such that its study of the discharge question was serious and fairly exhaustive. The agreement under which the House was organized, moreover, guaranteed full freedom to discuss and revise the Committee report in the House.[1] Mr. Snell, the new Chairman of the Committee, expressed a liberal desire for such rules as "will amply protect the individual and at the same time protect the House itself against the individuals."[2]

The provisions adopted under these circumstances differed in six points from the inoperative rule which they replaced:

1. The time allowed to a committee was increased. Under the old rule, a discharge motion could be filed 15 days after the bill had been referred, and could not be called up for 7 days thereafter. The new rule increased the minimum time to 30 and 7 days respectively.

2. Instead of requiring that the motion when called up in the House be seconded by a "majority by tellers," it was to be put at a convenient place at the Clerk's desk, where it could be signed by Members at any time. This was apt to increase further the time allowed the Committee, for the 7 days did not begin until 150 Members had signed, and the motion with signatures had been printed in the *Record*. A Member might withdraw his name at any time before the motion was thus printed and entered on the Discharge Calendar.

3. The Discharge Calendar was moved to first place on first and third Mondays, preceding the Unanimous Consent Calendar and suspensions instead of following both of them, as formerly.

[1] See *supra*, Intro., pp. 19-20.
[2] C. R. 68-1, p. 944; Jan. 14, 1924.

4. The actual vote to discharge a committee could be carried by an ordinary majority of a quorum, instead of requiring the extraordinary "majority of the Membership of the House."

5. Any signer of the discharge petition might move immediate consideration of the bill. Formerly it had merely gone to its appropriate calendar, where it was little better off than in committee.

6. The new rule applied to resolutions as well as to bills. Thus a proposal to change the rules, to adopt a special order, or to undertake an investigation, if held up in the Committee on Rules, could be brought out by a discharge motion.

This interesting new machinery was adopted by a vote of 253-114 on January 18, 1924. It was the center of controversy among the various proposals at the time.

Within the rule itself, the chief ground in dispute between Members holding different viewpoints, lay in the proper number of signatures which should be required. Mr. Crisp of Georgia, an able parliamentarian, who contributed largely toward the drafting of the rule, proposed on January 14 that 100 signatures be sufficient to bring a discharge motion before the House. He stated that he was a believer in control by the majority party, but continued: "I believe the minority party has the right to smoke out the majority and make them face issues, make them vote on great public questions. I think the minority has the right itself to go on record, and that is all this rule will do." The number must be below 150, because in the preceding Congress, for instance, there were only 131 Democrats. In support of this point of view, it was pointed out that 100 constitutes a quorum in Committee of the Whole, where the most important legis-

lation is considered. Then, too, the *Constitution* provides that one-fifth of those present, which is only 87 even if the full Membership were in attendance, can demand the "yeas" and "nays" and a record roll-call on any vote in the House.[1]

But Mr. Fish, whose draft of the proposed rule was followed in many particulars, believed personally that only 218, or a majority of the whole Membership, should be able to bring a discharge motion before the House. Mr. Nelson and the Republican insurgents, however, favored 100, although on different grounds from those advanced by Mr. Crisp. They thought a higher number would be usable for party purposes only, and they wanted the rule to give the individual or the group a chance. Accordingly, Mr. Fish in his proposal set the number at 150 in deference to those who had made the revision possible. This rather than 100 was the number adopted by the Committee on Rules by a vote of seven to four.

When the alternatives of 218 and 100 were proposed and debated from the floor of the House, Mr. Burton of Ohio, a veteran of the Republican party, summed up the case in a spirit of compromise: "Theoretically it ought to be a majority. The proposition on the other hand is 100. I give my deliberate opinion, Mr. Speaker, that the proportion is too small. I think 150 is the number, the least number, that should join in such a petition."[2]

The House was in too independent a mood for it to adopt the Graham amendment calling for 218, but it was not so bold as to go below 150. The fear had been raised that if the rule required only 100, it would be used to bring up a beer resolution (Mr. Hill of Maryland, who believed in a majority, threatened to do

[1] See Appendix D.
[2] C. R. 68-1, p. 960; Jan. 14, 1924.

this), or a "force bill" to reduce the representation of the South. Enough Democrats voted against the Crisp amendment, or abstained from voting, to insure its defeat, 163-225. Only 18 Republicans, most of whom were Cooper "insurgents," voted with the Crisp Democrats.

As a matter of fact, the new rule was employed on behalf of a bi-partisan measure, the Howell-Barkley bill for the settlement of railroad labor disputes. The sponsors of this measure were, respectively, a Senate Republican from Nebraska, and a House Democrat from Kentucky who had voted for the Graham amendment to require 218 signatures.

Machinery created in the Transportation Act of 1920 for the settlement of disputes through compulsory submission to a Railroad Labor Board was proving ineffective. Some railroads had refused to abide by the decisions of the Board. A great strike had occurred. The Board had before it an accumulation of 845 disputes, some of which had been pending for three years. As neither the Board nor the courts had power to enforce its decisions, there had been 148 violations by the carriers up to November 1923, according to the report of the Chairman of the Board. Presidents Harding and Coolidge had advocated a change, as had Mr. Davis, Secretary of Labor.

The bill which Mr. Barkley introduced in the House on February 28, 1924, substituted for the discredited provisions of the old act a system of compulsory conferences and voluntary arbitration, with power in the courts to enforce the awards. It was described as "old successful law brought down to date," and the principles of the bill were largely endorsed afterwards by President Coolidge in his December message to Congress, and embodied in the Parker-Watson bill in-

troduced two years later, which became law in May, 1926.

The Committee on Interstate and Foreign Commerce had caused more than its share of the discontent which had resulted in the new discharge rule. It had been cited, even by Chairman Snell in the Committee on Rules, as an example of a committee which might be made the mark for a discharge motion.[1] In the House, however, Mr. Barkley as the ranking Democratic member of the Commerce Committee, had warned against the discharge of "popgun" railroad legislation, "when the Members of the House know nothing whatever about the effect that it may have upon the country." He had stressed the need that the Committee consider a subject of such magnitude from all standpoints, including that of the public, and prophesied that the rule, if only 100 signers were required, would "open a perfect Pandora's box of trouble."[2] Nevertheless, he had voted for the rule in its final form.

Mr. Barkley's apprehensions regarding railroad legislation by the House itself subsided when he was unable to get consideration for his own bill. On March 26, 1924, in setting a program for its work, the Committee had voted (9 to 11) to take up a "truth-in-fabric" bill in the order which Mr. Barkley had moved to assign to his own measure. On April 15 he appealed from the indifference of the Committee to the interest of the House itself. He described his bill as the "result of two years of serious thought and collaboration among those who propose it," and told how he had been unable to get hearings, although the hearings on the same subject before the Senate Committee had been completed. He was interrupted by Mr. Nelson

[1] *Hearings*, Dec. 20, 1923, p. 45.
[2] C. R. 68-1, p. 1104; Jan. 17, 1924.

of Wisconsin, who suggested that he invoke the new discharge rule to get the bill away from Committee. Whether such action had been premeditated, or was called forth quite on the spur of the moment prompted by the inquiry, is not certain. At all events, Mr. Barkley forthwith gave notice that he would file a motion to discharge.

Two days later, Mr. Tincher commented on the fact that Members were signing the motion, and that it was the plan of the Democrats and of some Republicans to bring the bill out. On the next day, Chairman Winslow addressed the House in defense of his Committee. There were then 140 signatures. He explained that miscellaneous bills, which could be easily taken care of, had been considered first, and then the "partially finished bills." Only 12 communications had been received by the Committee regarding the Barkley bill, and seven of these had been unfavorable. Five of the latter were from railroad labor organizations (probably "company" unions, as representation under the bill was on the basis of the national brotherhoods). But a delegation representing the four great brotherhoods of railroad employees just before a session called "to determine a schedule," had urged that the Committee take up the bill. There were still about 173 bills before the Committee, which had met on 60 out of the possible 85 legislative days. Mr. Winslow tried to offer records of the Committee in proof of its activity, but a point of order that he could not do this under the practice of the House was upheld by the Speaker.

On April 21 the motion to discharge was printed in the *Record*, with the names of those seconding it, and was referred to the Calendar of Motions to Discharge Committees. Of the 154 signers, 124 were Democrats, 27 Republicans, 2 Independents, and 1 Socialist.

There were several piecemeal attempts to inform the House regarding the Barkley bill, both before and after the vote on May 5 to discharge the Committee; for under the rule, only ten minutes to a side were allowed at that time. On the Friday preceding, by special order, the House set aside four hours to discuss the pending discharge. The House was told that the bill had been framed chiefly through consultation with experts and representatives of the railroad brotherhoods. There was some sympathy for it among the railroad executives, but their organization under the influence of Mr. Atterbury had not yet approved the principles of conference which the bill proposed. The Committee was charged with pursuing a Fabian policy, overburdening itself with bridge bills and matters of lesser importance. In closing the debate, Mr. Huddleston made the support of the coming discharge motion very definitely a test of a Member's friendship for labor.

On Monday, May 5, when the discharge motion became in order, every possible means was used to obstruct its progress. There was an appeal to take up a veterans' hospitalization measure out of turn, to which Mr. Barkley had to object. The filibuster continued with points of order to be argued and overruled, and parliamentary inquiries. Finally, however, the discharge motion was carried by a vote of 194 to 181. There were 27 Democrats who voted with a majority of the Republicans on the side of the Committee. But 40 Republicans voted to discharge. Of the 18 Members who had supported Mr. Cooper for Speaker, and the five who had supported Mr. Madden, only one—Mr. Clague of Minnesota—voted against discharging the Committee. The *New York Times* of the following day reported that it had been "a long time since the House has been worked to such a pitch

of excitement as marked the proceedings. The debate was exceedingly bitter at times."

The rule gave "high privilege" at this point to a motion that the House proceed at once to consider the bill. This motion also was carried. But the filibusterers obstructed the progress of the measure into Committee of the Whole, and insisted that it be read in full—although the 35-page bill was at hand in printed form.

It was already late before general debate began. Mr. Barkley, after explaining the bill—which he was able to do only by refusing to be interrupted for inquiries—, moved that the Committee of the Whole rise. But he could not combine with that motion a stipulation that the House should resume consideration of the bill on the next day. Nor after the Committee had risen, could he use the obsolete motion "to recess" in order to insure that result. Even when he tried to secure a three-hour limit on general debate, at such time as the bill should be resumed, many substitutes and obstructive motions were interposed. Someone would make the point of no quorum. Then 20 or 30 Members would disappear in the lobbies, so that the Speaker could not count a quorum. The only action in order would be the motion to adjourn, and on this someone would demand the "yeas" and "nays," consuming about 25 minutes. Finally the Speaker called a motion "to adjourn" dilatory, and the three-hour limit was adopted. The House adjourned at 11:44 P. M.

On the following day, Mr. Barkley moved to resume consideration of the bill. Although the rule had seemed to cover every possible contingency, it was not clear whether a bill brought up in this way was to remain the order of the House until disposed of, or would be in order only on first and third Mondays. In

fact, during the whole progress of this bill, its backers experienced "perplexities springing merely from the want of precedents,"—such a situation as James Madison described in the first Congress, when at "every step the difficulties arising from novelty are severely experienced, and are an ample as well as just source of apology."[1] If the Speaker had ruled for Mr. Barkley's motion, it is difficult to see how anything could have prevented the passage of the bill. But he held that it would be in order only two days a month. This meant that it must go over until May 19.

This ruling, and the fact that under parliamentary law a record vote cannot be secured in Committee of the Whole, insured the ultimate success of the filibuster. On the 19th, after the general debate, when the first section of the bill was read for amendment, Mr. Sanders moved to strike out the enacting clause. This motion took the friends of the bill unawares. But evidently its enemies were present. The former tried to move a *pro forma* amendment ("to strike out the last word"), that they might gain time in which to rally their forces. But this effort was ruled out of order. Then the Sanders motion was adopted by the Committee of the Whole. The vote by tellers, which could be had in the Committee, but which gave no record of how a Member voted, was 144-134 in favor of striking out the enacting clause. Accordingly, the Committee of the Whole rose, and Mr. Longworth, the Republican Floor Leader, made the logical motion to refer the bill to the Committee on Interstate and Foreign Commerce.

But whenever a record vote could be had, the bill would command a majority. In the House, Mr. Longworth's motion was defeated by the "yeas" and

[1] *Writings*, V, 373.

"nays," 181-201. The House then refused to concur with the amendment "to strike out the enacting clause," which had just been made in Committee of the Whole. Mr. Barkley again took charge of the bill. But the filibustering against it continued. When at last he was able to get the House back into Committee of the Whole the hour was late. He did not desire to "punish" the Members, he said, by an all-night session, and, with the understanding that the bill would be the unfinished business on June 2, he moved to adjourn. It was then 10:17 P.M.

Although there were now no obstacles, except the filibuster, to the passage of the bill, it did not again come up for action. On May 27 Mr. Barkley introduced a resolution, which was referred to the Committee on Rules, to provide a special time for the consideration of his bill. The resources at his command, if he had availed himself of them all, would have included a motion to discharge the Committee on Rules from this resolution. By means of such a discharge motion, if signed by 150 and approved by the House, the special rule might have been brought before the House and adopted, thus assuring a time for the consideration of the Howell-Barkley bill. But the session was nearly at an end. June 2nd came in the week of adjournment, and on that date Mr. Barkley announced, in view of the filibuster, and lest other legislation be held up longer, he would refrain from pressing for action on his bill. He thus opened the way for the long delayed Consent Calendar and suspensions, with the understanding that his bill would be the unfinished business on first and third Mondays in the December session.

But the first Monday of December was the day on which the session opened, and the third Monday was set apart for Memorial Services in honor of the late

President Woodrow Wilson. On January 2, 1925, Mr. Barkley pointed to the fact that the (Howell) bill had been favorably reported in the Senate (by a committee vote of 10 to 3 on May 31). Hoping for early consideration and harmonious action there, the friends of the bill in and out of Congress had agreed not to press for the further consideration of the House bill. On February 16, Mr. Barkley noted that the essential principles of his bill had been endorsed in the three party platforms of 1924, and had been advocated by President Coolidge in his message to Congress. Pending better cooperation of railroad presidents, the friends of the bill had determined not to take any immediate action, but Mr. Barkley hoped for a satisfactory solution in the next Congress.

It is unfortunate that purposes and principles are judged by the peculiar circumstances under which they are first applied. The discharge rule suffered because a filibuster was made against the Barkley bill. The merits of the rule were confused in the clash of special interests over railroad problems. Then, too, a bill 35 pages in length, on so complicated a subject, is not well adapted to passage in this manner. Nevertheless this, the only attempt to use the rule, demonstrated that it was workable, and that, if party leadership refused to act, a bi-partisan majority could assume command. Such a majority could then push the bill to final passage, provided its supporters were sincere and willing to be present and voting until the end. A filibuster is possible under almost any circumstances, and the wonder is that, considering the questions which arose from the very newness of the rule, it worked so irresistibly as it did.

The value of a workable means to discharge committees should be considered apart from the merits

of one bill. This will be the intent of Chapter X. Since such a rule is most apt to be used to express a lack of confidence in the party leaders, and to take control, temporarily at least, out of their hands, the intervening chapter will be devoted to a study of the sort of mandate which a party receives from the country. If the will of the electors be accurately expressed through parties, there is no need for a discharge rule. If the election returns, by the success or defeat of men bearing certain party symbols, may be taken as a clear approval of the performance and the promises of a party, it may be well to give final responsibility to the party organization for the life of a Congress. If, on the other hand, these tests be rendered inaccurate by the conditions of American politics, there is need for some intermediate check upon party leadership.

When the Sixty-ninth Congress met in December 1925, Speaker Longworth and the Republican party had a clear majority over both Democrats and Insurgents. They were able to create almost a new Committee on Rules, eliminating, on one pretext or another, all but Chairman Snell and Mr. Burton, from among the eight Republican members of that Committee who had helped frame the discharge rule of the preceding Congress. Some party men wanted every trace of the rule to be erased from the book. But even by exerting party pressure they were unable to count enough votes to make the attempt. Instead, the Committee gave a new rule which was made so difficult that it would not be used.

The "gift" rule was framed under influences which were tepid or hostile to the discharge principle. At best, the House could only "instruct" a committee to report within 15 days. Furthermore, the rule required

the support of a "majority of the Membership" (at least 218), not only to pass the motion, as the rule of 1910 had required, but also to sign the petition, and, thirdly, to second it by tellers in the House. A teller vote is not a record vote and is almost never so well attended. Moreover, a call of the House was specifically prohibited by the rule. In view of the requirement of a fixed number, absence on such an occasion would have the same effect as a vote in opposition. Yet if a motion once fails to be seconded by the extraordinary majority under such circumstances, it cannot again be brought up during the life of the Congress. The time for debate on adoption of the motion was increased to 40 minutes, instead of 20, but the motion was made in order only once a month, on third Mondays. Finally, lest all these high hurdles should be scaled, the rule provided that, after the instructed committee reported the bill, it would merely go to "its appropriate calendar."[1]

"They very well know," said Mr. Crisp regarding the Republican leaders, "that they have proposed a rule which hermetically seals the door against any bill ever coming out of a committee when the Steering Committee or the majority leaders desire to kill the bill without putting the Members of this House on record on the measure."[2]

[1] On January 24, 1927, Mr. Garrett filed a motion to bring the Democratic tax cut bill from the Ways and Means Committee. But this move was so evidently futile under the terms of the existing rule, and was so plainly conceived as a party maneuver, that even the independent wing of the Republicans could not be drawn to aid the Democrats. The petition failed to receive the necessary number of signatures.

In fact, there would never be time enough to bring to final passage in this way a bill introduced in a "short" session. (In a leap year when the first of February comes on a Monday, such a bill might be forced through against the will of the committee on March 4. But the "short" session never comes in a leap year. Anyway, the legislative day of March 3 necessarily extends until the time of final adjournment at noon on March 4.)

[2] C. R. 69-1, p. 388; Dec. 7, 1925.

The minority leader, Mr. Garrett, twitted the Republicans for yielding to party pressure and discarding the previous rule, which, he said, had not been abused. He quoted the passage from St. Paul, "Let every soul be subject unto the higher powers," and read the names of 43 eminent Republicans[1] who had been for the workable rule in the preceding Congress, but now voted to supplant it.

[1] C. R. 69-1, pp. 933-4; Dec. 16, 1925.

CHAPTER IX

THE VERDICT OF THE COUNTRY

It is the aim of this chapter, after treating briefly the ideal of responsible government through two political parties, to deal with such present realities in American politics as tend to impair the perfect working of that theory. The two-party rather than the multi-party system will be assumed to be the normal condition of American life because of the central institution of the Presidency, which drives the "outs" to combine that they may win so great a prize.

The peoples of history have tried many means of bringing government to serve the general welfare. First crudely, by revolution; then in a more orderly fashion, in the constituent assembly; and, finally, under a settled constitution, by means of political parties, they have forced arbitrary power to give place to responsive and responsible government. In place of revolution, there is the expedient of voting for a different political party. Such action is orderly and free from all taint of treason. It has become disloyal, rather, not to seek, by means of the ballot, to place government in the hands of those best able to promote the public good.

The association in political parties of men who are candidates for office tends to have a broadening influence. Except for party, the individual candidate would act with an eye to his own election only. Small, organized groups, with temporary or special interests

at stake, able to "deliver" their vote at will, would exercise great influence upon the unscrupulous aspirant for office. For the moment, they may hold the balance of power. But those who have in trust the continuing welfare of parties look to ultimate results. They cannot afford, for the sake of instant gain, to lose the future confidence of the unaroused, unorganized mass of voters. Candidates come and candidates go, but the party must keep its record clean and consistent.

Another very real virtue of the party system has been pointed out by Brooks[1] when he says that it tends to break down local and sectional jealousies. This was undoubtedly true in the early days of the Constitution. Even the division in the Civil War was not because of parties, but in spite of them, for the Democrats and the Whigs strove to remain national. So always, an intelligent party leadership must suppress the narrow sectionalism of its followers, for it must seek to capture support in the doubtful and enemy territory.

One party is a check, too, upon the other. Each poses as the keeper of his brother's conscience. In the United States, the minority has a distinct duty to uncover any maladministration, and to give publicity to the facts. "The party," said Viscount Bryce, referring to conditions in the United States, "is usually the only power that can be relied on to induce the people to inflict by their votes a penalty for misdoing, and upon the parties some measure of responsibility can be fixed, for each has a motive for enforcing responsibility upon its opponents."[2]

The role which parties may play in clarifying and simplifying current issues has been exalted by such

[1] "Political Parties and Electoral Problems," p. 63 (1923).
[2] "Modern Democracies," II, p. 543 (London, 1921).

authorities as Wilson[1] and Lowell.[2] The former stresses the need that a party act as a "distinct organization. . . . under easily recognized leaders." The latter points to the fact that, since any number of points of view may arise with reference to a given issue, it is the function of party to make a definite alignment, presenting two more or less antagonistic solutions of the problem. It is necessary to formulate a "yes" or "no" alternative for the voters.

Such reasoning as this can hardly be controverted. But it is based upon conditions which are in a measure idealistic. "From time to time a distinct group may assume the control of the party, and again," as Professor Merriam has pointed out, "there may be conflicting groups or compromise programs."[3] Under the latter conditions, party platforms are devised more with an eye to catch votes than to set a definite course of action. Representative Haugen, apropos the Payne-Aldrich tariff "revision," remarked that many Members evidently thought that "party platforms are made to get in on and not to stand on."[4] The electorate usually takes campaign promises less seriously, and deservedly so, than past words and acts of the President or of the party leaders in Congress.

We have noted in chapters IV and V the value of party as a unifying force, to harmonize the executive and legislative departments of the Government. But the same divided counsels which create the need for party government may work its confusion. Just where does party responsibility rest? In House or Senate leaders, or in the President? The answer varies with the personality and popularity of the two

[1] "Congressional Government," esp. pp. 97-99 (1885).
[2] "Public Opinion and Popular Government," pp. 81 ff. (1914).
[3] "The American Party System," p. 391 (1922).
[4] C. R. 61-2, p. 8425; June 17, 1910.

variables. Sometimes, but not always, there is tacit agreement. Leadership was admittedly in the White House when the Democrats were in power (1913-1919). But the executive makes many recommendations which are ignored by the Congress, and Congress may instruct the President to take action which is foreign to his program.

Congress cannot even meet in special session to enact emergency legislation except on call of the President.[1] Though the term of each new Congress begins on the fourth of March, it does not regularly assemble, according to the *Constitution*, until the first Monday in December.[2] At the close of the Civil War, the failure of President Johnson to call Congress into session after the assassination of Lincoln was a chief cause of irritation against the President, and led to a complete reversal of his reconstruction program when the Thirty-ninth Congress finally met eight months later (Dec. 4, 1865).[3]

In an extreme case, Congress may impeach the President for failing to perform duties which it imposes upon him. But the President may, and often does, reflect public opinion more accurately than party spokesmen in Congress. If the electorate, as in the time of Roosevelt, retains the party in power because of the aggressive policies for which the President appeals, there is no constitutional means whereby the

[1] *Constitution of the United States*, Art. II, Sec. 4.
[2] Art. I, Sec. 4.
[3] That Congress before its expiration made special provision against similar delay in the calling of its successor. On January 22, 1867, by right of its Constitutional power "by law (to) appoint a different day" for the meeting of Congress (Art. I, Sec. 4), it fixed the time for the convening of the Fortieth Congress at noon, March 4, 1867, instead of the following December. Having once met, the new Congress insured its power to meet again at frequent intervals. It "recessed" by adjourning to a day certain, instead of adjourning *sine die*. Congress was thus able to keep an almost constant oversight of the process of reconstruction.

public can swing Congressional leaders into line. From such a situation grows one necessity for some parliamentary means, such as a rule to discharge committees, whereby the dominant sentiment of the country may express itself through a majority of Representatives following Presidential leadership, and bring the leaders in Congress into harmony with policies which the voters have come to recognize as the program of the party.

President Lowell [1] gives as his opinion that there is a more popular determination of policies under a two-party system, as in the United States and England, than where there are a number of parties, more or less irreconcilable class groups which change little except as a younger generation grows up with new social and political affiliations. A two-party system, he observes elsewhere, tends toward moderation.[1] While the European system may tempt the "center" parties to appeal for support from the extremes, our two parties can hope to swell their ranks mainly from the "middle-of-the-grounders," independents, and from the ranks of their opponents.

These estimates are, of course, "relatively speaking." They must be checked up by a study of actual conditions in the United States before we can judge whether the Congressional election returns are so accurate a verdict in favor of a party as to be beyond challenge for two years and four months. But the reasons for his estimates are valuable, because they set up a connection between the popular determination of policies, and the fluidity of party lines.

The hope of a true verdict upon party performance, then, rests with the voters who may be expected to

[1] *Op. cit.*, p. 82.
[2] "Government of England," pp. 536 f. (1908 ed.).

pass freely from one party to the support of the other. But in many Congressional districts of the United States, the judgment of the voters is so clouded by hereditary prejudice, by race antagonism, by rivalry between country and city, or by the personalities of local leaders, that there is no free choice between parties. Such a district is committed in advance. It has ceased to act as a discriminating force in national affairs. What is more, it adds to the general inertia, which must be overcome by more open-minded districts. Insofar as such a condition exists in the United States, it impairs the theory that strict party government is the most responsive to the popular will.

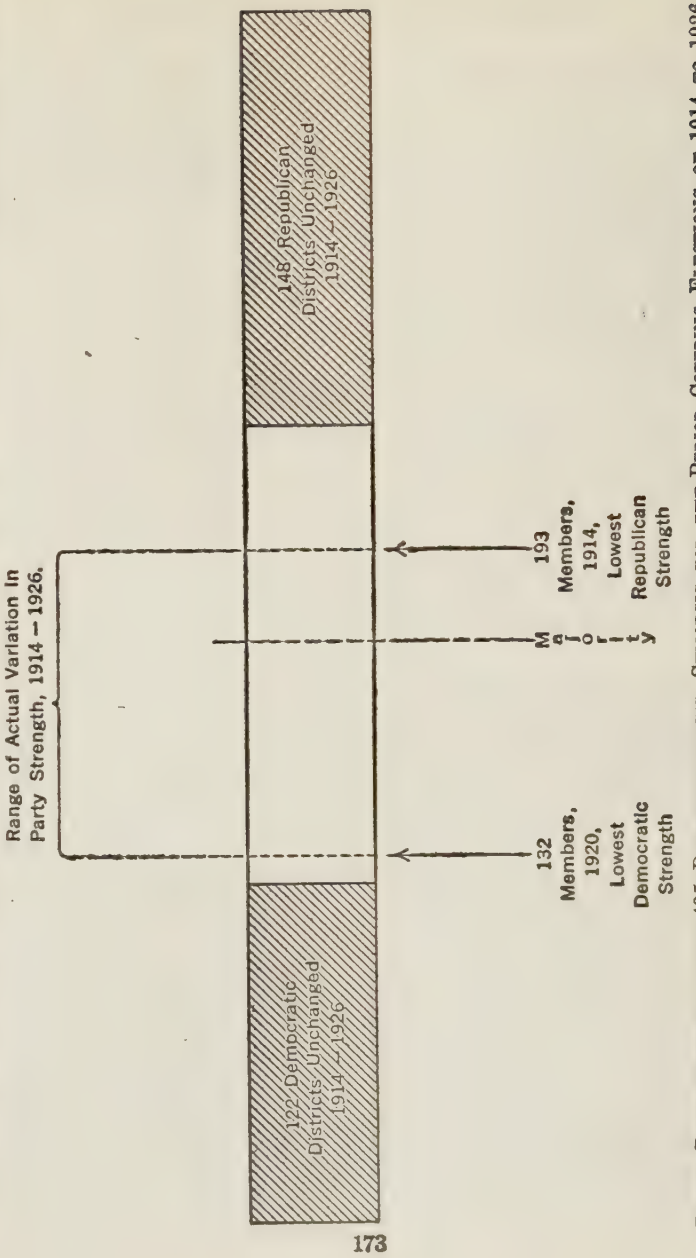
In our study of Congressional districts, an unusually long period is available during which the identity of districts has been preserved. The reapportionment under the census of 1910 went into effect before the elections of 1912. After 1920, however, the proposals for reapportionment have been delayed from session to session, for partisan and personal reasons, so that eight, in place of five, elections have taken place under the 1911 arrangement. Since the first of these, the election of 1912, was held under unusual conditions, not typical of the two-party system, it seems best, in general, to leave it out of the calculations. There remain, however, the seven elections, 1914-1926 inclusive, with the possibility of six changes in party allegiance. During this period, too, the political pendulum swung from Democratic ascendency in 1912 and 1914, when there were only 127 and 193 Republicans respectively, to the Republican landslide of 1920, which left only 132 Democrats in the House. West Virginia was redistricted before the election of 1916, Montana before 1918, and Pennsyl-

vania before 1922, for the purpose of absorbing Congressmen who had formerly been elected at large. In each case the year of change was left out of the calculations, but the results seem to have been very little, if at all, affected.

During this period, through all the vicissitudes of party fortune, 122 districts never strayed from the Democratic party. (See Diagram.) There were 148 which showed unchanging Republican allegiance during the 14 years. The sum of the "standpat" districts of both parties was 270, or 62.1% of the total Membership (435) of Congress. The number would not be diminished for the Democratic party by the inclusion of the 1912 election, and 98 of the reliable Republican districts remained steadfast even in that abnormal year, making a combined sum of 220, or 50.6% of the total Members of Congress.

These unchanging districts have mostly become committed to a party for better or for worse. Few of them show evidence of an active discrimination between parties on the basis of current issues. Voters may, it is true, persistently support one of the parties because they approve its basic principles, either on grounds of local economic interest or of deep-seated political philosophy. But party loyalty tends to become a habit. Most of the districts which do not change have come to follow a voting label for traditional reasons, irrespective of the merits or demerits of the party in a given campaign. They take no discerning part in the verdict of the biennial elections, when the actual record of a Congress is under review. These inactive factors in an election are, as we have seen, a majority of the constituencies of the country.

The districts most completely detached from the normal conflict of parties are the ones made up largely of so-called "zero" precincts, which in the lower


148 Republican Districts Unchanged 1914–1926
122 Democratic Districts Unchanged 1914–1926
Range of Actual Variation in Party Strength, 1914–1926.
193 Members, 1914, Lowest Republican Strength
Majority
132 Members, 1920, Lowest Democratic Strength

PARTY DISTRIBUTION OF THE 435 REPRESENTATIVES, SYNOPSIS FOR THE PERIOD COVERING ELECTIONS OF 1914 TO 1926, INCLUSIVE.

South return no votes, or inconsequentially few, for Republican candidates, or in Philadelphia, for example, disclose no support for the Democratic ticket. There districts are so hopeless from the point of view of the opposition that often no contesting candidate is placed in the field.

Then there are the areas in both North and South where it simply is "not respectable" to vote under the other emblem. In North Carolina, for instance, many manufacturers are cordial toward the national policies of the Republican party. But when, in 1926, the Republican State Committee nominated for the United States Senate one of these manufacturers, Mr. Charles A. Cannon, he declined on the ground that he could not desert the Democrats in state politics.

Embracing still more area are the large portions of the United States without any daily newspaper of political opposition.

In all these districts, the real contest, if there is any contest at all, takes place over the nomination of candidates of one political party.[1] But the expression of the popular will in primaries or nominating conventions does not register upon Congress in terms of

[1] The number of votes in the state-wide primary for United States Senator in Georgia in 1926 was four times as great as the votes cast in the election, while the lack of interest in the election as indicated by reduced votes was almost as pronounced in Louisiana. This falling off of the election vote in the South is the more remarkable because of the fact that in some states negroes are prohibited by law from taking part in the primaries, whereas less direct means must be used to keep them from voting in the election. Primaries are not, under the Newberry decision (1921), 256 U. S. 232, within the control of the federal government, or, consequently, under the Fifteenth Amendment to the *Constitution of the United States*, forbidding any state to deny citizens the right to vote because of color. A recent decision by the Supreme Court (Nixon vs. Herndon, March 7, 1927) voided the Texas statute of 1923 which barred negroes from the Democratic primaries. The opinion was based, however, on the clause of the Fourteenth Amendment granting "equal protection of the laws". The avoidance of the Texas statute, which was the most "bald" of its kind, will not in itself radically alter the white primary system which prevails in the South.

party control. Because such districts hold blindly to the party label, the Representative so elected may find himself more in sympathy with the other party than with his own on the particular issue on which he won the nomination. He may sometime feel justified, under these circumstances, in seeking to bring before the House legislation to carry out the program on which he was elected. He may with reason, therefore, at the time of adoption of the rules, hesitate to vote away to the party spokesman final power to select or suppress all legislative proposals.

Contrary, perhaps, to the general impression, the proportion of "standpatism" is about the same in both parties. The average number of Democrats in the seven Congresses has been 193, of whom slightly over 63% came from districts which gave unvarying loyalty to the Democratic party. The average number of Republicans was 236, of whom slightly under 63% came from "standpat" districts.

A study of changeableness, or fluidity, of Congressional districts by states (Table A.) throws light upon the states and the sections of the country which are apt to elect Representatives of varying party allegiance, and which are therefore decisive in a Congressional election. The returns of the past seven elections (1914-1926) are again taken as the best guide to the future. Each district has been set down opposite its state, in the appropriate column indicating the number of times it has changed from one party to another. Thus the twenty-fourth district of New York, which varied its party allegiance with each election, counts one under the column indicating six changes, while the fourteenth district of Massachusetts, which went Democratic three times, then Republican four times, is set down under one change. Its conversion in 1920 seems to have been real, for the Republican

TABLE A.—PARTY REGULARITY OF CONGRESSIONAL DISTRICTS, 1914–1926, Inclusive

	Tot. No. Dists.	Standpat		Frequency of Change						Fluidity [1]		
		Dem.	Rep.	1	2	3	4	5	6	State	Section	U. S.
NEW ENGLAND											7.8%	
Maine	4	..	3	1	..	..	..	..	..	4%	...	...
New Hampshire	2	..	1	..	1	..	..	..	..	17	...	...
Vermont	2	..	2							0	...	...
Massachussetts	16	2	11	1	2	..	..	..	..	5	...	...
Rhode Island	3	..	1	1	1	..	..	..	..	17	...	...
Connecticut	5	..	3	..	2	..	..	..	..	13	...	...
MIDDLE ATLANTIC											17.9%	
New York	43	6	15	5	12	4	..	..	1	18%	...	...
New Jersey	12	1	5	1	2	1	1	1	..	24	...	...
Pennsylvania[2]	36	..	21	7	5	2	1	..	..	15	...	...
CENTRAL											14.2%	
Ohio	22	..	7	6	6	3	..	..	..	20%	...	...
Indiana	13	..	2	6	3	2	..	..	..	23	...	...
Illinois	27	3	16	4	2	1	1	..	..	9	...	...
Michigan	13	..	11	1	..	1	..	..	..	5	...	...
WEST CENTRAL											10.9%	
Wisconsin	11	..	7	3	..	1	..	..	..	9%	...	...
Minnesota	10	..	5	1	3	1	..	..	..	17	...	...
Iowa	11	..	10	1	..	..	..	..	..	2	...	...
North Dakota	3	..	3	..	..	..	..	..	..	0	...	...
South Dakota	3	..	2	1	..	..	..	..	..	6	...	...
Nebraska	6	..	1	3	2	..	..	..	..	19	...	...
Kansas	8	..	2	4	1	1	..	..	..	19	...	...
BORDER											23.4%	
Delaware	1	..	..	..	..	..	1	..	..	67%	...	...
Maryland	6	1	..	2	3	..	..	..	..	22	...	...
West Virginia[2]	6	..	..	2	3	1	..	..	..	37	...	...
Kentucky	11	7	2	1	1	..	..	..	..	5	...	...
Missouri	16	2	2	2	7	..	3	..	..	29	...	...
Oklahoma	8	3	1	..	3	..	..	..	1	25	...	...
SOUTH											1.6%	
Virginia	10	9	..	1	..	..	..	..	..	2%	...	...
North Carolina	10	9	..	1	..	..	..	..	..	2	...	...
South Carolina	7	7	..	..	..	..	..	..	..	0	...	...
Georgia	12	12	..	..	..	..	..	..	..	0	...	...
Florida	4	4	..	..	..	..	..	..	..	0	...	...
Tennessee	10	5	2	..	3	..	..	..	..	10	...	...
Alabama	10	10	..	..	..	..	..	..	..	0	...	...
Mississippi	8	8	..	..	..	..	..	..	..	0	...	...
Arkansas	7	7	..	..	..	..	..	..	..	0	...	...
Louisiana	8	7	..	1	..	..	..	..	..	2	...	...
Texas	18	17	..	1	..	..	..	..	..	1	...	...
MOUNTAIN											18.3%	
Montana[3]	2	..	1	1	..	..	..	..	..	30%	...	...
Idaho	2	..	2	..	..	..	..	..	..	0	...	...
Wyoming	1	..	1	..	..	..	..	..	..	0	...	...
Colorado	4	1	1	2	..	..	..	..	..	8	...	...
New Mexico	1	..	..	..	1	..	..	..	..	50	...	...
Arizona	1	1	..	..	..	..	..	..	..	0	...	...
Utah	2	..	..	1	1	..	..	..	..	25	...	...
Nevada	1	..	..	..	..	..	1	..	..	67	...	...
PACIFIC											11.4%	
Washington	5	..	4	..	1	..	..	..	..	7%	...	...
Oregon	3	..	2	..	1	..	..	..	..	11	...	...
California	11	..	3	7	1	..	..	..	..	14	...	...
TOTAL U. S.	435	122	148	68	67	19	8	1	2	...	...	12.0%

[1] The percentage of fluidity was found in each case by dividing the actual number of variations between parties by the possible number. There were seven elections, with a maximum of six changes per district.

[2] In three instances, states were redistricted after 1914 to absorb Members theretofore elected at large: (1) Pennsylvania, 1922; (2) West Virginia, 1916; (3) Montana, 1918. In these cases, the year of change was not allowed to enter into the calculations in either dividend or divisor.

majority has subsequently increased, until in 1924 it was more than two to one.

The "percentage of fluidity" is secured by dividing the actual number of changes by the possible number for each state. Thus, in the state of Missouri there are 16 Congressional districts. The two which have always gone Republican and the two which have always gone Democratic do not enter into the dividend. Two districts changed once, seven changed twice, and three changed four times. Multiplying and adding, we find that the dividend is 28. The divisor is 96, found by multiplying the 16 total districts by the six possible changes. The quotient gives a fluidity of 29% for the state of Missouri.

The states are grouped in the most logical manner possible, with due reference to the classification which seemed to be most nearly true to the data. It was unfortunately necessary to depart from the standard groupings usually employed by the Government in its statistical surveys. Thus, Delaware and Georgia, though both placed by the Government arrangement in the South Atlantic group, represent entirely different political sections from the point of view of our study. The division here has been rather on historical lines. The Border states, which did not secede, have been classified as distinct from the South. Similarly, Wisconsin has been added to the West Central section. States of doubtful Congressional districts do not necessarily coincide, it will be noted, with states which are doubtful in a Presidential election.[1]

[1] Professor Holcombe, in his book "Political Parties of To-day" (1925), presents many tables which show, from Congressional returns and votes in Presidential elections, the strength of the Republican party (and, derivatively, of the Democratic party) in the several sections, and by states. His method of approach, however, in the erstwhile parlance of the street, is "from the inside looking out." He takes account of the party affiliations of Members for the purpose of throwing light on political conditions existing in the country at large. The in-

It is plain from the table that the changeable districts fall markedly in the Border, the Middle Atlantic, and the Mountain sections. This is true to a lesser extent of the Central states, which on the other hand are considered extremely doubtful in the electoral vote for President. The percentage of fluidity for the United States as a whole is 12%, and the sections falling below that grade may be considered to exercise a lesser influence in deciding the balance of power between parties. The South is strikingly low, with New England next. The West Central and Pacific sections are slightly below the percentage for the country as a whole. With regard to the latter two sections, however, the fact should be borne in mind that there are frequent contests within the Republican party itself, which in some cases result in the election of only nominal Republicans. Such men are usually out of sympathy with the Republican organization, openly repudiate the party platform, and may even oppose the party candidate for President. A majority in Congress which is dependent upon such support is hardly a workable majority for the purposes of party government.

To gain a true understanding of Congressional districts, it is necessary, as it is not in the case of Presidential returns, to separate urban from rural districts within the several states. Their characteristics are distinct. Indeed there is a tendency to act by antip-

terest of the present work, conversely, is in heading up the record of Congressional shifts in such a manner as to show their bearing upon the internal organization of the House.

Another statistical presentation, by Hannah Grace Roach in the *American Political Science Review* of August, 1925, is entitled "Sectionalism in Congress (1870-1890)". The author shows that during the period of her study voting in Congress was according to sectional predispositions, rather than party cleavage. The votes on certain bills are analyzed from the point of view of sectional groupings.

athies. In many states, they regularly are to be found in opposing camps.

In selecting the districts throughout the country which are classed as "urban," only the 68 cities of more than 100,000 population in the 1920 census have been included. This limit has been set because it is standard in the census reports, and because 100,000 is approximately half of the population ratio of 211,877 assigned under the Congressional apportionment of 1911. It may safely be assumed that a district containing a city of more than 100,000 would be dominated by the urban influence. Sometimes, in the case of metropolitan areas, certain districts include both urban and rural territory. Such divided districts are classed as "urban" only if the city and its immediate outskirts seem to predominate.

By and large throughout the United States, it appears that city districts swing more readily from one party to another. The percentage of fluidity for the 129 urban districts is 16.6%, while for the rural districts it is only 10.1%. This result is undoubtedly due in part to the fact that the closer associations and better news facilities of a large city make for greater alertness. Local government there is more complicated and comes closer home to the individual voter, and no doubt the political activity thus engendered is transmitted, in part at least, into national politics. Then, too, the proportion of urban districts is greater in the North, where conditions on the whole are more changeable than in the South. But considering the South by itself, the city districts are every bit as static as the rural areas.

It is not true in all states of the North, however, that city districts are the ones which swap parties most readily. Conditions in this respect vary greatly from one state to another. In Massachusetts the urban

percentage of fluidity is zero, while the rural is 12%. New York, in direct contrast, presents the most striking example of divergence, with country districts forming the unchanging element. There the city districts changed parties 26% of the time, while the remainder of the state changed only 2%. In fact, under our classification, there was only ONE of the 14 "rural" districts which strayed at all from the Republican allegiance, and this district, the thirtieth, contains the city of Schenectady, which comes quite near to entering the 100,000 class. In Pennsylvania, again, the reverse situation exists. Rural districts change 19%, the urban less than 9%.

In Ohio, Indiana, and Illinois, there is no great difference between urban and rural figures. The two variable Michigan districts are located in or near Detroit. In Missouri, on the other hand, the urban districts, though numbering only four out of the total 16, furnish three-fourths of the "standpat" strength. The only unchanging area in Maryland is the fourth district (Democratic), in the city of Baltimore. No marked difference is to be found in California, but the only Oregon district to shift its party allegiance was the one including the city of Portland, which changed twice.

We find that, in the aggregate, only a minority of Congressional districts take an active part in the process of discrimination which determines the political complexion of the House. So far as the remaining districts—the majority—are concerned, party leadership in Congress rests upon the circumstance of shifts on the part of certain other districts. These shifts may, or may not, reflect the true verdict of the country at large upon the particular issues of a campaign.

Not only must we consider the large number of districts which are "committed" to a party. We must also take due account of the fact that in many of the remainder, personality or personal commitments of candidates, and not either the performance nor the promise of parties, determines the result.

In the critical days of 1918, the country rather bluntly repudiated the idea of party government, when it refused to grant President Wilson's appeal of October 24 for the election of Democrats. Many Republican Members had supported the President's war program better than some of his own partisans. When the country refused to treat the election as a vote of confidence in party leadership, it was undoubtedly influenced in part by war psychology, and by the fact that the President himself had announced that "politics is adjourned."

But even under normal conditions, the party plays a lesser rôle in this country than in England. Viscount Bryce notes the difference when he says: "In England the prime minister and the leader of the Opposition (often an ex-prime minister) have been recognized as leaders not only by the candidates who at the last preceding general election have declared their willingness to support one or the other, but also by the rank and file of their respective parties. These leaders have thus a sort of right to the allegiance of their followers, though a right which they may forfeit. In America no candidate pledges himself to support a particular Congressional leader. It would be thought unbecoming in him to do so."[1] Lowell likewise asserts that the English people pass judgment more directly upon the whole policy to be followed, while in the United States we vote for the

[1] "American Commonwealth," p. 165 (1914 ed.).

men who are candidates. He cites 1904, when "Congressional districts could, and did, vote for Colonel Roosevelt, and elect at the same time Congressmen strongly opposed to his plan for increasing the navy."[1] He concludes that we are representative rather than democratic. A recent psychological study in politics "supports President Lowell's observations that in America, campaigns are waged for and against men rather than measures."[2]

The distinction leaves its mark even on the language of politics. An Englishman is said to "stand for Parliament." An American, in contrast, "runs for Congress." The former takes his position on the party policy and leadership, which are well recognized, while the American candidate, if his district is at all doubtful, must make an active appeal in order to commend himself personally to the electors. Party headquarters in England assist the candidates financially and otherwise to a greater extent than do our national Congressional Committees, although the activities of the latter have gradually increased since 1894, when the Republican Committee was revived.

The present Republican Congressional Committee is composed of one Member from each state having Republican representation in the House. The members of the Committee are nominated by the Republican delegation from each state, and elected by the caucus. The Committee in turn elects an executive committee, which conducts the campaign. The Democratic National Congressional Committee is chosen in the same manner, but each Democratic Committeeman is permitted to appoint a woman from his state as an additional member. These Committees concentrate

[1] "Public Opinion and Popular Government," p. 77 (1914).
[2] Meier, "Motives in Voting: a Study in Public Opinion," *American Journal of Sociology*, vol. XXXI, p. 212, Sept., 1925.

their activities upon the doubtful districts where their meager efforts may perhaps be successful in swinging the election. To this end, they usually issue campaign text-books setting forth the party record in Congress.

The recent spread of the direct primary, however, more than counteracts the cohesive influence of the Congressional Committees. When the nomination was under the control of a local committee or party boss, the candidate for Congress was picked with some regard to his adherence to the basic principles of the party. But a "primary man," upon entering Congress, has undergone no such scrutiny. The absence of "regularity" is apt to be especially marked in "off" years, when there is no Presidential election. There has been no national convention to write a party platform. In the case of the "outs," there is no nationally recognized standard-bearer to give direction to their attack.

Especially in the West, the influence of personality is great and the sense of party is weak. The California primary law, for instance, allows a candidate to enter primaries of all the political parties, and a majority of the members of the state legislatures of 1921 and 1923 actually had been nominated by two, and in some cases by three or more parties.[1] Representative Samuel B. Hill portrayed a similar situation in the state of Washington:

> "In my district and in my state is developing an increasing body of citizenship, independent, thinking men and women upon whom the bonds of party regularity rest lightly, if at all. They no longer follow blindly in the path of partisan leadership, but are exercising their prerogatives at the polls to vote for such men and measures as are in accord with their ideals of government by and for the people."[2]

[1] West, "Our Legislative Mills," article on California, from a series in the *National Municipal Review*, XII, p. 373.
[2] C. R. 68-1, p. 1108; Jan. 17, 1924.

Moreover, the habit of reelecting Members of Congress has been growing. This results in more experienced legislators, but lays stress upon loyalty of the voters to persons rather than to parties. Logically, the effect is to justify more leeway for individual action in the House.

In former years, a majority of the Members of Congress were almost always new. Even James G. Blaine pointed out that in his time the majorities of ten successive Congresses, with one exception, had been new men.[1] But such has never been the case in recent years. Even in the Sixty-third Congress, elected in 1912, the simultaneous effects of a third party movement and a reapportionment failed to drop the percentage of reelected Members below 64%. Subtracting from the total Membership of the House the number of new Members, vacancies, and Members who, though having seen previous service, were not in the Congress just preceding, we find that the percentages of Members returned in the last eight elections are as follows:

Congress	*Election Year*	*Per cent Reelected*	*Per cent with Some Previous Service*
63	1912	64	66
64	1914	68	73
65	1916	80	83
66	1918	75	77
67	1920	72	76
68	1922	67	73
69	1924	81	84
70	1926	88	90

The average portion reelected, on the basis of these eight Congresses, is 74%. This may be termed the general "expectation of reelection." The average portion of experienced Members, on the other hand,

[1] "Twenty Years of Congress, from Lincoln to Garfield," vol. II, p. 675 (1886).

has been 78%. This preponderance of returned Members is far greater than in state legislatures, many of which still include representatives of districts which elect according to the principle of rotation in office. The completeness with which Congressional districts have abandoned this principle has already been demonstrated in Chapter II in connection with the organization of committees on a seniority basis.

With local conditions such as we have noted, and with the control of committees depending upon seniority, it is evident that the men in places of power are not those whose districts are apt to be decisive in the election. The party leaders usually represent districts which return the same party Congress after Congress. They are men of experience who have come to be trusted through a long period of apprenticeship in party control.

Henry Clay in 1811 was chosen by the "War Hawks" to be Speaker of the first House to which he was elected. But at that time the new Members controlled the House by a wide margin. John Quincy Adams, whose long service as a Member began in 1831, was placed at once at the head of the important Committee on Manufactures. But the "Old Man Eloquent" had the unique distinction of entering the House after having been President of the United States. William Pennington, too, became Speaker in 1859 for his first and only term in Congress. But his elevation, under three-party conditions, was due to the fact that he was colorless. To-day, with new Members always in a respectful minority, the practice is firmly rooted that the Speaker and the principal party leaders are to be chosen from among those who stand near the head of the service list.

The result is often a preponderance of leaders from one section. Thus in the Sixty-eighth Congress, the Speaker of the House, Mr. Gillett; the Chairman of the Committee on Interstate and Foreign Commerce, Mr. Winslow; the Republican leader in the Senate, Mr. Lodge; President Coolidge; and the Chairman of the Republican National Committee, Mr. Butler, were all Massachusetts men. In like manner, under President Wilson, gentlemen from the "solid South," such as majority leader Kitchin, of North Carolina, held most of the key positions.

Coming from home districts which are usually safe, —"pocket" districts, as it were,—the men who are responsible for party success at the polls need to consult the interests of localities other than their own. So long as they approach their legislative duties in the spirit of mediators, the necessity of attracting the doubtful districts will make for a wholesome liberality.

But the security of their position within the party creates an opportunity to abuse their power. They are "in the saddle," and the legislative steed has been so broken and bridled that there is little danger they will be unseated. There is no established means of calling to a personal account the Members who dominate by virtue of their senior positions on committees. They can, therefore, if they will, be blind to the general welfare—to the detriment of party, it is true, but with a dangerous leeway of personal immunity—and pursue a policy of class or sectional benefit.

When the people of the United States are thoroughly aroused upon a great principle, they are able to make their will effective, sooner or later, through the medium of existing political parties, or by forcing a realignment.

The House of Representatives, in fact, is better adapted to party government than is the Senate. There a majority vote often represents a minority of the population. The states of New York and Nevada, for example, with a population ratio of 134 to 1, are each represented by two Senators. Indeed, four Senates since 1875 have been controlled by party majorities which represented only a minority of the population of the country.[1] The constitutional method of electing Senators by "classes," a third every two years,[2] prevents a party majority of that body from being returned at any one time, while the six year term was undoubtedly intended to remove the individual Senator from too frequent or close contact with public opinion. The entire House, in contrast, is renewed biennially. Its Members are all, in theory at least, elected upon the issues of the same campaign.

Even in the House, however, we have seen that there are important qualifying circumstances. A leadership divided between Congress and the President, local inertia, the personality and personal commitments of candidates, the direct primary, and the growing custom of reelection,—these are realities which may impair the accuracy of the popular verdict, if that verdict be interpreted in terms of party alone. A political majority in the House is an approximate, but by no means an unimpeachable measure of the nation's approval.

[1] Wooddy, "Is the Senate Representative?" *Polit. Sci. Quart.*, June, 1926, pp. 232-4.

[2] *Constitution of the United States*, art. I, sec. 3.

CHAPTER X

THE CONFIDENCE OF THE HOUSE

THE party mandate from the country is taken, by some, as a word of finality within the House itself. What is the true basis of such a claim, and how far may it rightfully extend? If the campaign was waged upon one or a very few of the moot questions of the day, have leaders a right to speak with final authority in the name of party upon other subjects which will press for solution, or upon new problems which may arise during the life of the Congress?

Though uninstructed in these affairs, party managers may extend their authority to include all business by virtue of the claim that their "capacity to govern" was endorsed by the electorate. Indeed, many elections can have no other meaning, since they lack clear-cut issues entirely. Leadership on this basis is an extension of "representative" government to the relations of Members within the House itself. Such an extension, while no part of the formal plan of the "founding fathers", is nevertheless in line with practice in the early state legislatures. "Juntos" controlled the assemblies and drafted legislative programs.[1] Nor is the delegation of wide powers to a trusted individual or group foreign to the general philosophy of the Constitution-makers themselves,—provided only that sufficient checks be preserved within the system itself to guard against the abuse of trust.

[1] Nevins, "The American States during and after the Revolution, 1775-1789," pp. 13-14 (1924).

Party government, then, is an agency for organizing a numerous legislature on a working basis, as nearly as possible in accord with the prevailing temper of the times. Confidence is reposed in personal ability and in underlying political philosophy, even more than in party platforms or pledges.

But the electorate is unable, under the *Constitution,* to revoke a general commission of power for the period of two years and four months. Some intermediate check is customary and desirable under free modern governments. The *Constitution* did not conceive of parties, but in establishing a fixed term for Congress, it did provide a means by which the Government should be kept constantly responsive to opinion in the several states. It provided that a Representative must be "an Inhabitant of that State in which he shall be chosen."[1] The representative system was based upon responsibility of the individual Member, who knows local sentiment from direct and immediate contact. The "confidence of the House" cannot safely be dispensed with while the country is estopped by the *Constitution* from registering its approval or censure during stated intervals.

With respect to proposals of affirmative action, the leaning toward bi-partisan support is pronounced. Party responsibility is shunned, too often perhaps, regarding the acts of a Congress. But the power of the leaders over its omissions is supreme. There is here an unwarrantable difference in the degree of control. No appeal, in the absence of a workable discharge rule, rests against the leaders' power of suppression.

Practical necessity is a powerful check in matters of affirmative action. The vast majority of legislative proposals have been kept "out of politics." Matters

[1] Art. 1, sec. 2.

in the most important class, involving amendment of the *Constitution,* must virtually always command support from both political parties, because of the two-thirds requirement for their approval by both houses of Congress. Such has been the case in all recent proposals, both the one which failed and those which succeeded in securing the necessary ratification by three-fourths of the states. The divergent elements in so large a nation fail to present any single social cleavage which would hold good as a two-party division on many basic problems. Neither party can formulate, for example, the issue of railroad legislation, in a manner satisfactory to all sections of its support. More often than not, in Congress, party lines are disregarded, and problems are "talked over in meeting." The practical end in view is to give satisfaction to a majority of all the Members, irrespective of party adherence.

Party control through leadership in the House is further lessened by the fact that there are in Washington two virtually equal legislative chambers. While bicameral legislatures are the rule in other countries also, under the cabinet form of government the lower house becomes dominant. In the United States, however, this concentration could not take place because the powers of government are located by the *Constitution,* and are rather equally divided between the chambers.[1]

By composition, as we have seen, the House is better fitted than the Senate to be the seat of party government. But the House lacks certain essential powers which belong to the Senate alone. The House takes no part in the confirmation of appointments to federal offices. It does not share in the treaty-making power, by which the Senate alone, except in the appropriat-

[1] See Appendix D.

ing of money to carry treaties into effect, or in the actual declaration of war and peace, participates with the President in the control of foreign policy. Yet foreign relations and Presidential appointments are prolific fields of partisan controversy. The old saying with regard to the former that "party politics cease at the water's edge" has been true only in times of international quiet. When the country has been stirred by events of the first magnitude in foreign relations (short of the actual prosecution of war), the ban has often given place to heated party dissension.[1]

The two chambers, moreover, are sometimes under the control of different political parties. Of the last 26 Congresses, eight have found the House and Senate definitely opposed in political complexion, while in the case of several others, the party control in one chamber was only nominal, being dependent upon third party support.[2] Under such conditions, the influence of party is minimized in the hope of securing needed legislation. Thus Lowell, in his statistical study of party voting in England and the United States, calculated that when the executive and both houses were of the same party, in the Fifty-fifth Congress, the amount of party voting was 7.18%. But when the executive and the lower house were of one party, and the Senate of another, only about 1% of public laws were party measures.[3]

[1] While there are questions of international obligation which cannot wisely be settled by majority vote, the discussion by Congress and the press of foreign policy in the making, and even at times the waging of a political campaign upon the issues involved, are salutary in counteracting illiberal tendencies which are apt to develop by reason of a permanent personnel in the State Department.

[2] Cf. Wooddy, "Is the Senate Representative?" *Polit. Sci. Quart.,* June, 1926, esp. p. 237.

[3] "The Influence of Party upon Legislation," *Am. Hist. Ass. Rept.,* 1901, vol. I, p. 323, esp. Plate III. A party vote was defined as one in which not more than 10% of the members of either party split off from their colleagues, that is, in which there was 90% or over of regularity.

These obstacles, inherent in the American frame of government, must be reckoned with by statesmen who believe in the party ideal. To the mature minds of Elihu Root, Chauncey Depew, Speaker Longworth, President Coolidge, Senator Fess, and Representative Tilson, all of whom take frequent occasion to preach the gospel of party regularity, the attribute of the party system which chiefly justifies it may be expressed in the word "responsible." This is the great boon which is offered if individuals will surrender their independence and merge their fortunes in "one cohesive party." "At sufficiently close range to know what I am talking about," said Mr. Tilson, "I say without fear of successful contradiction that the men who have left records of things worth while accomplished have been the dependable party men on both sides of the line."[1]

These men are not speaking to defend an accomplished fact. Rather they are striving for the benefit which they believe will come from a greater strengthening of party ties. They fear less a danger from the possible overgrowth of party power, than from the alternative to party control, which is ever present and threatening, namely, legislation by blocs. In short, they refuse to accept the ideal of "free union and individual responsibility" set forth by Ostrogorski, who advocated that two fixed parties be done away with, and would substitute leagues forming and reforming spontaneously, with alliances between them.[2]

There is a measure of truth in the claim that the bloc introduces reality into public life.[3] But that

[1] Radio speech from Station WRC, Washington, D. C., Jan. 16, 1926.
[2] "Democracy and the Organization of Political Parties," p. 727 (1902).
[3] See Gilbert, "Behind the Mirrors" (1922). Chapter XI, regarding Mr. Grey Silver and the farm "bloc" was entitled, "A Peak of Reality Thrusts Up on the Level Plain of Shams."

which the party system has to offer is more essential to good government. A bloc does not hold together well on matters other than technical measures benefiting its particular interest. When controversial or novel problems arise, it splits up, being founded upon special self-interest. It is not organized for all-round service on the basis of an underlying political philosophy. The political party, and not the bloc, is adequate to the whole task of organizing the House.

It seems desirable, therefore, that party allegiance should grow in meaning, and have more binding force than it does at present. To this end, Members would do well to show increased deference to party leading, and vote "regular" unless strongly provoked to a dissenting view. The party ideal should be spurred on to achieve its greatest limit of service. In the nature of things there is a limit. But that limit will be sufficiently enforced, with respect to affirmative action, by practical necessity.

It seems wise, in order that party leadership shall not "fall from grace," that only questions of major importance be advanced as party measures. "The freedom thus enjoyed by Members on minor questions," says Bryce, "has the interesting result of preventing dissentions and splits in the parties. There are substances which cohere best when their contact is loose. Fresh fallen snow keeps a smooth surface even on a steep slope, but when by melting and regelation it has become ice, cracks and rifts begin to appear. A loose hung carriage will hang together over a road whose roughness would strain and break a more solid one."[1]

Party government, in other words, cannot well be carried to a logical conclusion, but must be kept within rational bounds. Laski ridicules the extent to

[1] "American Commonwealth," pp. 206-7 (1914 ed.).

which, under the English system of Cabinet government, questions of confidence sometimes extend. "The absurdities to which this leads," he says, "are well known. Under the Balfour administration of 1900 it actually led to a question of whether pillar-boxes should be green, being made a matter of confidence; and the unfortunate critic of the executive (who was actually one of its supporters) found himself compelled to deny his own colour-preferences."[1]

Yet even in the English system, each Member reserves a potential freedom of action. This is the significance of the vote of no-confidence. It may apply, moreover, not only to affirmative proposals of the Cabinet, but also to negative decisions, by means of amendment of the King's address, or by a private Member's motion.

The "checks and balances" of the United States were never intended to extend, either, to a possible deadlock between the House and its leaders. Members are at liberty to withdraw support from any affirmative action which the party strategists may propose. But their most extensive power is negative. They may suppress legislation upon the calendars or in the committees. Against decisions of the latter sort, there is no means of dissent, except through a discharge rule which will allow the House to call legislation from a committee, or to bring a special order from the Committee on Rules.

In addition to the general considerations with which we have dealt, there are seven features of our form of Congressional government which create special necessities for a workable discharge rule. Of these, the first four result from the nature of the American committee system.

[1] "Grammar of Politics," p. 349 (1925).

1. The seniority principle in committee assignments. A discharge rule as the antidote against possible ill effects of seniority has already been advocated in chapter II. Such use of the rule would be necessary only in rare instances when a committee became violently at odds with a determined majority of the House.

2. The secrecy of committee action. "In publicity," wrote M. Guizot, "consists the bond between society and its government. Looking, however, at facts, we find that of the elements essential to a representative government, this is the last which is introduced and gains a firm footing."[1] A discharge motion puts a Member on record. It will prevent him from talking one way at home and acting another way in the House.

3. The scattering of responsibility under the committee system. It is difficult to punish or reward a political party when each separate committee has a character and a policy of its own. A workable discharge rule would be a means of "smoking out" the party leaders. It would compel them to oppose a measure in the open instead of suppressing it, perhaps, by private influence upon the committee. At times, too, they are willing to let a committee take its course in refusing action upon a measure, when they would cease to oppose it if the issue were squarely before the House. In the first session of the Sixty-ninth Congress, for example, legislation for the regulation of the coal industry seemingly had the endorsement of the Republican Steering Committee. It had been recommended in two separate messages by President Coolidge, and the report of the Hammond Fact Finding Commission had been for three years available for use. Yet the constitutional difficulties

[1] Quoted in McConachie, "Congressional Committees," p. 36 (1898).

seemed insuperable to the Committee on Interstate and Foreign Commerce. It delayed action, and laid itself open to the charge that it was influenced by the "invisible government" of lawyers and lobbyists in the pay of the "coal barons."[1]

4. Unusual discretion of American committees in matters of general principle. In the House of Representatives, a bill goes to committee automatically, without any instructions from the House to govern the committee's attitude. There is no time-limit to its power to suppress. Thus the right, so jealously guarded under the English system, to pass upon the general principle of a measure before it goes to committee for perfection of details, is denied both first and last to the American House if there is no means to discharge. The House formerly exerted, at times, a closer direction over its committees than it does at present. While primary jurisdiction by experts is an ideal which may wisely be encouraged, it cannot safely be carried to the extreme that inaction may deny to the House the final word of command.

5. The constitutional restriction that "Bills for raising Revenue shall originate in the House."[2] Let

[1] See the futile complaints upon the floor of the House on June 17 and 21, 1926. One argument much used against a discharge rule has been that it would increase the activities of lobbyists. As pointed out by Representative Fish in hearings before the Rules Committee on Dec. 20, 1923 (p. 32), however, lobbyists are particularly at an advantage in affecting committee action, since a few members of the committee who do not care much one way or the other about the legislation may be quietly won over with decisive results. At the same time, Members of the House other than the committeemen dislike to interfere, being busy with their own duties. It would be more difficult, on the other hand, for the lobbyists to corral a majority of the Membership of the House, as they would have to do in working for or against a discharge motion. The activities of these legislative agents—the "third house," which has been officially organized in Germany and elsewhere to participate in the legislation affecting economic interests—would thus be brought more into the open.

[2] Art. 1, sec. 7.

us assume that the tariff on dyestuffs or on potash stood at so high a rate as to seriously restrict the supply, and raise the prices to an unwarranted level because of limitations upon the production of such articles in the United States. A majority of the Senate might be ready to bring about a revision of the rates downward. The President might favor modification of these schedules, and even, like President Taft, have spoken for such modification in his campaign. Republicans favoring consumers' or farmers' interests might form with the Democrats a large majority of the House disposed to moderate the existing policy. Yet the Senate would be powerless to act. If the House were organized as Republican, a scant majority of the majority party—a bloc of slightly more than one-quarter of the total Membership—could prevent the legislative wheels of the government from moving, unless it were possible for a bi-partisan majority to reach a tariff bill held in committee. Of course, the situation might be reversed, or might apply to any tax bill.[1]

6. Tendency to political oscillations. Lowell, in noting the swing from one party to another in alternate elections, gives as a chief reason, that a party does not reflect exactly the opinions of those who elected it. This is true in part because party action is directed by a fraction of the party, at best a majority, and gives rise to discontented elements within its ranks.[2] A discharge rule would open up an outlet for such discontent, instead of allowing it to accumulate until election. The particular issue involved may thus be settled, without the necessity of turning out the

[1] It was to a fear of tariff legislation that Mr. Garrett ascribed the repeal of the workable discharge rule of the Sixty-eighth Congress. C. R. 69-1, p. 934; Dec. 16, 1925.

[2] Lowell, "Oscillations in Politics," *Annals of Am. Acad.*, 1898, XII, p. 94.

party in power, provided in the main it continues to reflect the attitude of its supporters.[1]

7. Tendency toward lethargy. If private Members have opportunity for independent action only by voting "nay" on measures brought forward by the leaders, and have no means of initiation, then the party leaders need fear rebuff only when they seek to act. By keeping quiet, they play safe. The rules of the House thus encourage "do-nothing Congresses," unless there be some means to discharge committees, and to discharge the Committee on Rules from a special order bringing forward new business. Herein lies a danger that Congress may fail to fulfill the expectations of the country with regard to constructive legislation. Hasty action, of course, is to be avoided. But the other extreme is likewise deplorable. Examples of measures which, though generally desired, were delayed for years before enactment are: railroad regulation, the parcel post, the Federal Reserve system, utilization of Muscle Shoals, "truth-in-fabric" legislation, and coal regulation.[2] In many instances, the persons directly interested, who proverbially seek to be let alone, manage for a long time, with the aid of

[1] It is not necessary to go the full extent of the English system, under which all action of the House of Commons is overshadowed by the knowledge that if it successfully challenges the Government in any matter, Parliament itself will come to an end, and Members will be called upon to go through the confusion of a general election. Such a situation appeals to many absentee theorists as splendidly logical. But that it is not the *summum bonum* in practice, is the testimony of a Member of Parliament. "The members of the majority party in the House (of Commons) are never able to take a free decision on the measure submitted to it by the Government," he observes. "The system . . . destroys the independent judgment of the House, and its control in the public interest. The method of the United States is an advance upon our own." He advocates a fixed term (four years) for Parliament, with power, in case of "serious disagreement," to choose another executive. Whitehouse, "The Constitutional Systems of England and the United States," *Contemporary Review*, Oct., 1926, p. 462.

[2] The last three were not secured to the end of the Sixty-ninth Congress.

highly paid lawyers, to thwart the public demand for action.

The effectiveness of a rule making possible the discharge of committees is to be judged, not so much by the use which is made of it, as by the vicious practices which it discourages. It may be effective as the "big stick behind the door," without being brought out for actual use. Government must always be essentially by leaders, but it is necessary to keep the machinery of government so responsive to the people it serves, that they shall feel a sense of control. In the truest analysis, the end of government is to give means for the expression of men's aims for the public good. The channels for such expression must be kept open.

CHAPTER XI

THE PROCESS OF APPEAL

"The slowness of its operation is, as far as it goes, an objection to a measure; but if this slowness may be a means of obviating a dissatisfaction, which expeditious measures would excite, the former may be preferable. . . .

"But if nothing of the kind will do, and it be found impossible to untie the gordian knot, it must e'en be cut. The welfare of all must not be sacrificed to the obstinacy of a few, nor the happiness of ages to the quiet of a day." Bentham [1] (1748-1832).

"If the two-party system is breaking down as an agency for democratizing an undemocratic government, the remedy is not to democratize the party, which was organized to democratize the government, but to democratize the government itself." Croly.[2]

The technical draft of a proper discharge rule for the House of Representatives is not within the range of the present study. There are, however, certain principles which seem to be justified by facts set forth in the preceding chapters. These principles suggest the character and scope of such provisions as might satisfactorily solve this insistent problem.

By way of background, it is of value to consider briefly the practices in the several state legislatures. The states, from colonial times, have been the laboratories for the development of parliamentary practice. Nevertheless, it must be borne in mind that nowhere else is there so highly developed a scheme of procedure as in the federal House of Representatives.

[1] Essay on "The Influence of time and place on matters of Legislation," Works, I, 182.

[2] "Progressive Democracy," p. 343 (1915).

In no state is there so complete a monopoly by privileged orders of business, and, as a result, the method of keeping open some opportunity to discharge committees presents in the states a less complicated problem.

Committee jurisdiction over both the principle and the detail of bills is the rule in all state legislatures. The *Index-Digest of State Constitutions* [1] shows that 11 constitutions specifically required that bills go through the committee stage before they could be enacted by the legislature.

In many states, there is a limit upon the length of time bills may be retained by a committee. Sometimes this limit is indefinite, as when the Kentucky constitution provides that "if a committee refuse or fail to report a bill in reasonable time, it may be called up by any Member and be considered in the same manner as if reported." [2] The rules of approximately one-third of the legislatures set specific time-limits. These limits range from four and five days in the Nebraska Senate and House, respectively,[3] and six days in the Texas House,[4] to 25 days in the Minnesota Senate.[5]

The provisions for enforcement of such rules are more significant, however, than the number of days specified. In Nebraska, where so little time is allowed, we are told that "hardly any attention is paid to the rule. The explanation offered by Members is that it requires the impossible. Relatively few bills,

[1] P. 839. This Digest was prepared in 1915 by the Legislative Drafting Service of Columbia University for the New York State Constitutional Convention Commission.

[2] Article 46. The House by a simple majority, and the Senate by a majority of all Members elected, are the judges, according to their respective rules (1926), as to the extent of time which may be considered "reasonable" in each instance.

[3] *Nebraska Legislative Manual*, 1925.

[4] *Texas Legislative Manual*, 1925.

[5] *Minnesota Legislative Manual*, 1925.

however, die in committee, although they may not be acted upon until late in the session."[1] In most states that have a time limit, the committee is not automatically discharged after the expiration of the time, but enforcement of the rule is left to the initiative of some Member or Members, presumably the author or sponsor. Although rule IX, sec. 5 of the Texas House reads that "the Speaker shall instruct the committee that the House desires an immediate report," a note indicates that it is evidently up to the introducer to call the Speaker's attention to the fact that the time has expired. A two-thirds vote of the Texas House is required to extend the time of the committee.

In a number of the states, there is no provision for enforcement of the time-limit. Theoretically, in such a case it would seem that any Member would have the right to raise a point of order that the committee must report, but in practice it appears that the Member's only resource in compelling the observance of the rule is regularly to move the discharge of the committee. Other states have provisions such as Iowa Senate rule 35 b, which provides that "if a committee to which a bill was referred neglects to report it back within 15 legislative days after reference, the author of the bill may have the bill placed upon the calendar by calling the president's attention to the situation."[2] The adoption of this rule in 1915 was hastened by unpopular delays on the part of the committee on the "Suppression of Intemperance." That such a rule is in practice reserved for use in exceptional cases is shown by the fact that in the Thirty-sixth General Assembly of that state, there was only one instance in which the presiding officer of the Senate ruled on a

[1] Boots, R. S., article on Nebraska in the series, "Our Legislative Mills," *Nat. Mun. Rev.*, XIII, p. 113 (1924).
[2] *Iowa Official Register*, 1925-6.

point of order that a committee must report a bill. 150 bills were retained over the 15 days, as against 380 reported in that time. The record nevertheless was better than in the House, which had a 10-day limit but no provision for enforcement. There over 500 bills were kept beyond the time, as against only about 260 reported within the requisite period. Of four House resolutions to discharge committees, only one was adopted.[1]

Minnesota House rule 55 shows a little higher development, giving the laggard committee three days of grace. If it does not report within the 15-day limit, "any Member may request that the bill be returned to the House. A committee shall then have three days to report back the bill requested. If the committee fails to report within three days, any Member may at any time after the expiration of such three days, during the order of 'Motions and Resolutions,' demand the return forthwith to the House of the bill in question, which shall constitute the demand of the House, and the said bill shall at once be considered to be in possession of the House, subject, however, to such disposition as the House may determine."

Massachusetts procedure is in many respects *sui generis*. Particularly is this true in that "the habit of living up to rules is strong in Massachusetts," according to Mr. Luce,[2] who has been intimately identified with government in that state. All bills before the joint committees of the General Court, or the committees of the separate houses, are disposed of in one way or another before the adjournment of each session. The rule is that committees must report all matters on or before the second Wednesday in March; but the time may be extended until a day not later

[1] "Statute Law-making in Iowa," pp. 222-225 (1916).
[2] Luce, "Legislative Procedure," p. 165 (1922).

than the second Wednesday in April. If a committee is not ready to make a definite recommendation for final action on a bill, it may report "with a recommendation of reference to the next annual session."[1] But at this stage any Member may move that the original bill be substituted for this report, and if such a motion receives the required majority, the measure is brought before the whole house at once.[2]

In state legislatures where no time-limit exists, the normal procedure is to present a resolution or motion for the discharge of a committee, which, in the absence of special stipulations in the rules, may be carried by a majority vote. In this way, the majority of the House, theoretically at least, keeps the whip-hand of the situation. Even in Minnesota, where there is a time-limit, the House or Senate can take such action before the time expires. In the Rhode Island House such a motion is in order only on Fridays, and is to be decided without debate, except that five minutes each are allowed for explanation by the proponent of the bill and the chairman of the committee.[3] In the Senate of that state, however, a two-thirds vote is required to discharge a committee without notice, but after one day's notice this may be done by a majority of all the Members elected to the Senate.

The requirement has also been high in Michigan. Indeed, the provision in the constitution of 1908, requiring a majority of all Members elected, was a reduction from the still higher requirement of the rules which were in vogue there. "The situation," wrote Mr. Dodds, basing his facts upon the debates in the constitutional convention of 1907-8, "was so serious in

[1] *Massachusetts Manual*, 1923-4, pp. 584, 623.
[2] Hanford, article on Massachusetts in "Our Legislative Mills," *Nat. Mun. Rev.*, XIII, p. 43 (1924).
[3] *Rhode Island Manual*, 1925-6.

Michigan, where under the two-thirds rule a minority could prevent the discharge of a committee throughout the session, that the present constitution prohibits the legislature from passing any rule which would prevent a majority of the Members from taking a bill out of the hands of a committee."[1] Rule 39 of the Illinois Senate,[2] and rule 9 of the New York Assembly[3] likewise require a majority of all Members elected. The Senate of New York does not need more than a majority of Members voting, in order to bring a bill out of committee, but two days' previous notice of such a motion must be given in writing. The discharge machinery was brought into play in both Senate and Assembly in the session of 1925 on behalf of the Mastick-Shonk bill fixing a forty-eight hour working week for women in industry. The legislative program of the Republican party, which was in the majority, had advocated some such legislation, but it was in danger of defeat by indirection since it was held in committee in both houses. Enough Republicans joined with the Democrats in the Senate to discharge the committee, and Lieutenant Governor Lowman ruled that the Senate could immediately proceed to consider the discharged bill, which was forthwith passed. In the Assembly, however, where the higher requirement prevails, a similar discharge motion was defeated.[4]

There are a few state legislatures which have made discharge easier than by an ordinary majority vote. In the Illinois House, if a discharge motion has been filed and read on the day previous, 77 Members, or

[1] Dodds, "Procedure in State Legislatures," p. 53 (1918).
[2] *Illinois Handbook*, 1925-6.
[3] *Clerk's Manual*, 1926. New York has also adopted the Massachusetts system to the extent of requiring that all bills be reported by April 5, unless further time is granted for cause. (Rule 21.)
[4] *New York Times*, Mch. 27, 1925.

43% of the entire Membership, may take the bill from committee.[1] The same end may be attained in the New Jersey House upon the written request of 15, or of seven in the Senate.[2] The Pennsylvania House in 1913 changed its rules so that 60, instead of a majority of all the Membership (i.e. 104) could discharge a committee and place the bill on the calendar for action. The rule, as further amended in 1917, however, while still allowing the discharge by 60 Members, requires the further vote of a majority of those voting in order to place the bill on the calendar. On January 18, 1924, Mr. Kelly of Pennsylvania, pointing to the fact that 60 out of 207 Members were sufficient to bring out a bill in his state, added that the rule "has never been abused; it has been used in every session since its adoption, and has been working well."[3]

Of more than ordinary significance is the discharge of a committee, variously named in different states, through which the leaders of the majority party "sift" legislation for enactment. In some legislatures this committee acts only toward the end of a session, at which time the house to all intents and purposes abdicates as a deliberative body, and places almost unlimited discretion in this small group of leaders. But in other states such a committee operates at all times.

In Iowa beginning as far back as 1839, it has been the custom to appoint such a sifting committee in the House a few days before adjournment. There later developed a conflict between the House and Senate rulings on the vote required to withdraw a bill from that committee. In 1909 when the committee was thought to be "wet," it refused to report two anti-liquor bills on the ground that their consideration

[1] *Illinois Handbook*, 1925-6.
[2] C. R. 68-1; p. 1131.
[3] Rules of 1926 session.

would take up too much time. The Speaker of the House (ruling the reverse of existing Senate precedent) held that it would require a suspension of rules by a two-thirds vote to withdraw a bill, since the adoption of the resolution creating a "sifting committee" had become a standing order of the House. He allowed a request for an immediate report, however, to pass by a simple majority. By 1915, in Iowa, "the chief function of the sifting committee appears to have been to hold most of the bills referred to them until withdrawn by order of the House." Approaching the function of a "mere custodian of the bills," it serves to prevent rather than to promote legislation.[1]

The Rules Committee of the New York Assembly, however, is a much more active agency of party control. During the last ten days of a session, reports of this Committee providing for special orders or suspension of rules "shall stand as the determination of the House, unless otherwise ordered by a vote of a majority of the members elected."[2] Until 1913, a two-thirds vote was required to assert the will of the House in opposition to this Committee, but now a majority of all the Members elected is sufficient to "instruct" it to report. This requirement is the same as for any other committee, although the significance of an appeal over the heads of the party leaders during the final "jam" is great, as indicated above in the attempt to bring out the forty-eight hour bill for women.[3]

The Committee on Rules in the federal House of Representatives does not ever become "custodian"

[1] Horack, "The Committee System," in Statute Law-making in Iowa, pp. 545 ff. (1916).
[2] Rule 23 of the 1926 Assembly.
[3] Page 205. Nearly every recent session of the Legislature has seen some attempt to discharge this Committee, and in two or three cases the motion has succeeded.

for bills in general, but it exercises at all times the functions of a "sifting committee" by virtue of its power to grant privilege to legislation by means of special orders. It can at any time report a special rule to take a bill from a committee and to advance it to immediate consideration and final passage by the House. Such action requires no more support than that of a simple majority.

The "party machine," embodied in the Steering Committee, the Speaker, the Floor Leader and the Rules Committee, has no need of a discharge rule to accomplish its ends. The party leaders have ready to their command the big guns of parliamentary action. They can utilize these weapons with telling effect upon a recalcitrant committee, although mostly they find more peaceful means availing to produce results. Besides the special rule, they have in their control the device of suspending the rules and discharging a committee; and the Committee on Rules may make suspensions easy.

On April 20, 1908 the House adopted a report from that Committee making suspensions in order by majority (instead of two-thirds) vote for the remainder of the session. The immediate purpose of "martial law" was to defeat the Williams filibuster. But it served to make easy the action of Republican leaders, in defiance of their Committee on Banking and Currency, when the party chiefs determined upon the passage of currency legislation. The panic of 1907 had seemed to give urgency to the demand for amendment of the national bank laws. President Roosevelt had recommended action. When, therefore, the Committee, on motion of Mr. Prince of Illinois, voted against reporting a bill on the subject, the Republican caucus determined to act.

On May 14, Mr. Vreeland moved in the House to suspend the rules and discharge the Committee from consideration of a bill which he had introduced on the preceding day, embodying the ideas of the caucus. When Mr. Prince objected to the discharge of the Committee before it could consider the Vreeland bill, Mr. Burton of Ohio replied that the Committee had already refused to consider similar legislation, and said:

"For three evenings that caucus (Republican) considered the subject of currency legislation. . . . They gave hearings to all comers, and then, by a vote of 128 to 16, determined that we should bring this measure into the House. . . . It is much to be regretted that nothing can be done on the initiative of the Banking and Currency Committee, but the time has come when something should be done, and it is part of the legislative history of recent currency legislation that the most salutary measures brought before the House and passed, have come from sources outside the Committee." [1]

The Vreeland bill was taken from the Committee and passed, although by less than a two-thirds vote. It passed the Senate, and on May 27 the conference report was adopted by the House. In the next session of the Congress, Mr. Cochran of New York recalled how a "recent financial measure affecting the commerce of this country more deeply than any passed since the Sherman law, was driven through this body with only an hour's debate, without a copy of the bill being in the hands of a single Member, while our only knowledge of its provisions was such memory as we were able to preserve of words read from the desk."

A standing rule under which committees may be discharged is clearly not necessary for use by party leaders, but is to be judged as a means whereby a non-partisan majority may act. The "responsible leaders" may merely assume a policy of "hands off."

[1] C. R. 60-1, pp. 6247-8.

Or they may throw the weight of their influence against action. Circumstances lay them open, perhaps, to the charge that they have failed to function as disinterested party leaders, and have followed instead their own class or sectional interests. It is a case in which sharp punishment alone will prevail upon those vested with office and power.[1]

Action to invoke a discharge rule under such circumstances may rightly be termed "insurgent," because it is a rising against those in whom authority was placed at the organization of the House. It is a partial indictment of the existing party policy, and of the men who have been made responsible for that policy. It is apt to be attended by confusion, and is subject to the dangers which beset summary action by a large assembly. It is an extraordinary power, to be wielded only in case of real emergency after prevailing opinion is shown to be on the side of revolt.

The burden of showing a majority, ought therefore to rest upon the mover of the discharge motion. The device should not be open to use for propaganda purposes by a futile minority. All reasonable doubt must be resolved in favor of the established leaders, if the House is to secure the benefits of orderly legislation and centralized responsibility. A party organization is under no obligation to prove its credentials in every instance, but the burden of proof rests upon the non-organization forces.

[1] "The pressure of the machine interests and of the interests which the machine directly represents is much more continuous and intense," says Bentley, "than that of the sub-group interests, or even than the party interest, and it finds its way forward till checked by sharp punishment." "The Process of Government," p. 231 (1908). Mr. Chester L. Jones fifteen years ago lamented the fact that "no means has been developed in America by which the party can be called before the bar of the House to answer for its policy on specific measures," and held that "the indefinite and distant responsibility which the party owes to public opinion at the time of the elections" is insufficient. "Statute Law-making in the United States," p. 2 (1912).

It seems best therefore that 218, or a majority of the total Membership, should be required to sign a discharge motion before it can be brought forward for action by the House. Sentiment should be allowed to crystallize outside the chamber. Until such time, the committee has a legitimate function in delaying action. Committees in the past have been criticized for failing to report upon such questions as the abolition of slavery in the District of Columbia, prohibition, or more recently the education bill. But the committee has been used for a time as a means of postponement by a House not yet ready to act, but not wishing to go on record in opposition. Back of the House, too, there has usually been a public sentiment divided, doubtful, or unaroused.

After due notice has been given in advance by the printing of such a motion, with 218 names, in the *Record,* seven days may well be allowed to elapse, as in the present rule, before the motion can be brought before the House. In the interim, technical advice may be secured, and the committee may prepare its defense. After these preliminary requirements have been met, however, an ordinary majority of those voting should be sufficient to advance the motion through the various stages in the House.

Not later than the Friday before the Monday when it can be brought before the House, the Member who moves the committee's discharge should be required to file a report, stating the purposes of the bill, and the perfecting amendments, if any, which he intends to offer. He should be required to include also a report by the Legislative Counsel of the House, dealing with the technical, legal, and constitutional effect of the proposed legislation.[1] The chairman of the

[1] For an excellent example of the work of the Legislative Counsel, see its law memoranda published in connection with committee report No. 1262, an act to create a Bureau of Civil Aeronautics, reported Jan. 20, 1925.

committee likewise should be encouraged to file a statement (or statements, in case the committee could not subscribe unanimously) covering the committee's attitude upon the bill from which it is proposed to be discharged, and upon other legislation of a similar nature. These reports, or briefs of them, should be printed in Saturday's *Record*.

The seconding vote on Monday in the House should be by tellers. This method of voting would test the sincerity of signers of the motion, and make it easy for them to reconsider in the light of evidence presented in the reports. Viscount Bryce in the *American Commonwealth* (p. 303) held that Congressmen are prone to act as delegates rather than as representatives, and, too frequently, do not "have courage enough to resist a momentary impulse of their constituents which they think mischievous." The vote by tellers, not being a record vote, would encourage Members to use their best judgment, on the "representative" theory. It would also prevent the later defeat of the bill by one of the non-record votes in Committee of the Whole. In this way the enacting clause was struck out of the Howell-Barkley bill.[1] The vote by tellers would be a test of sincerity, too, in case the minority party was simply conniving with members of the majority for the purpose of embarrassing the majority leaders. This method of voting would allow those who did not sincerely favor the legislation to break away from minority party discipline.

But no more than an ordinary majority of those voting should be required. The present rule makes necessary a majority of the whole Membership on this and the following vote. Mr. Snell, on December 7, 1925, in advocating such extraordinary majorities, pointed to the fact that an equal number had been required as signers of the petition, and that "the principle is the same," having merely been applied three times instead of once. It is one thing, however, to have a majority of the Members go to the Clerk's desk sometime at their convenience to sign a petition, and considerably more difficult to marshal them all at one time, especially on a Monday morning. Mr. Mann had pointed out the difficulty of securing a favorable vote by a majority of the Membership on Monday, "when there is seldom more than a quorum of the House present."[1] Even under normal conditions, it would be difficult to secure such a vote. There is a vast difference between the usual requirement—a majority of a quorum of 218 Members,—and the affirmative vote of 218 Members, as required by the present rule.

[1] See page 160.

After 40 minutes of debate, the motion to discharge the committee would come up for vote. In view of the notice which has been given, and the proof that the predominant opinion of the House, including absentees, demands action, an ordinary majority vote should suffice, instead of the majority of the total Membership as specified in the present rule. Two motions should then be of the highest privilege.

First, there should be opportunity to move that the bill be referred to a special committee, to be elected by the House. A proposed "slate" for such a committee would ordinarily be made up by the leaders of the combination friendly to the measure, since they would be temporarily in control. Since such a slate could succeed only if it obtained a wide basis of support, it would have to include Members representing the different points of view favorable to the general purpose of the legislation.[2] The special commit-

[1] C. R. 62-1, p. 78; Apr. 5, 1911.

[2] Such a committee would be a return to the early practice of Congress, when the proponent of a measure usually became the chairman of a "spe-

tee ought to be given the right to report at any time, which carries with it the right of immediate consideration.

The more intricate bills would probably be referred to such committees. The right of interested persons to be heard would thus be preserved in cases where there is a complicated conflict of interests. Technical amendments could be perfected. For this work, a large legislative body has been found ill-adapted.[1] The committee would be able to call upon administrative agencies, such as the Interstate Commerce Commission, in the case of railroad legislation, for opinions on administrative features of the bill. Such facilities are not open to private persons who originally draft bills, and as a result the bills as introduced usually represent one-sided reforms. The special committee would also perform the function of the "committees on revision" on third reading in a number of the state legislatures, several of which give such committees power to correct, or to recommend correction of inaccuracies and inconsistencies, to make the bill accomplish the purpose intended.[2]

The motion to refer to such a committee as has been advocated should have preference over any other motion. The second motion to be accorded high privilege, in case the former is not made or is de-

cial" committee charged with its elaboration. The House, having already approved the principle of the bill, had "a controlling power over the names and number" of the committee. Jefferson cited the English precept as applicable: "The child is not to be put to a nurse that cares not for it." *Jefferson's Manual*, sec. XXVI.

[1] Over half a century ago, when the problems of legislation were far less complicated than at present, John Stuart Mill wrote: "In legislation as well as administration, the only task to which a representative assembly can possibly be competent, is not that of doing the work, but of causing it to be done; of determining to whom or to what sort of people it shall be confided; and giving or withholding the national sanction to it when performed." "Representative Government," p. 40 (1861, People's Ed.).

[2] See Dodds, "Procedure in State Legislatures," p. 79 (1918).

feated by the House, should be a motion to consider the bill at once. In the case of a short bill with simple, concise subject-matter, the House might be ready to act without delay, on the strength of the reports already submitted. In such a case, the bill should remain the order of business until disposed of, rather than, as under the ruling on the Howell-Barkley bill, on first and third Mondays only, or, as under the present rule, going merely to its appropriate calendar.[1]

The requirement of a statement of purpose by the proponent of the bill, and of legal effect by the Legislative Counsel, before action on the discharge motion, and the report of the special committee in the case of more complicated bills, are highly desirable to save the House from the risk of "half-baked" legislation, and to assist the courts. Members, in practice, too often give their support to measures such as a discharge motion, not as the result of careful investigation into the merits of the bill, but because of some immediate incident of a personal or political nature. Some point of management or mismanagement, a concentrated propaganda, the example of friends or foes, forms a bias of the moment. The exact purport of the legislation ought to be made clear. Technical explanations need to be put in a form ready for the use of Members, who will thus be encouraged to base their votes upon merits of the legislation itself. Since it is often a weakness of reformers that they spurn technical advice, the discharge rule should not be available for their use, except under conditions guaranteeing ex-

[1] A similar distinction between simple and complicated legislation was noted by John Stuart Mill as far back as the Athenian Democracy, "where, in the time of its most complete ascendency, the popular Ecclesia could pass Psephisms (mostly decrees on single matters of policy), but laws, so-called, could only be made or altered by a different and less numerous body, . . . called the Nomothetæ." "Representative Government," p. 41 (People's Ed., 1861).

pert assistance. Moreover, the courts have come to take committee reports, and statements of purpose by those in charge of legislation, as a help in arriving at the legislative intent.[1] Such a key to interpretation would be largely lacking in case of discharged bills unless the proposed reports were required. A broader view of constitutionality, set forth in such a report, sometimes prevails upon the court, when otherwise it would refuse to sustain the legislation.

In advocating a discharge rule, we must consider, finally, the effect which it would exert upon a possible realignment of parties. It would provide a testing-ground for new movements, in the organ of government which is best constituted to mirror public opinion. Such action might prove a sufficient warning to party leaders. In place of allowing abuses to become flagrant, they would, if wise, realign the existing party in matters of policy.

A conservative party, for instance, would be saved from becoming too conservative, since the insurgent minority within its ranks would lean toward the center to gain support from an opposing "liberal" party. Similarly, a party catering to sectional interests would be leavened by its minority, if the latter sought temporary alliance with an opposition representing other geographical divisions. The rule may, therefore, reduce the need for a new party alignment.

If, however, existing parties could not adapt themselves to new conditions, the rule would provide a parliamentary outlet for the forces of change. It would aid in developing the essentials of a new party, namely: national leadership, an applied philosophy, and a definite economic alliance. It would give new

[1] For examples of such use, see *Duplex* v. *Deering*, 254 U. S. 443, pp. 474-477, and citations of cases therein; for other cases, see 24 Columbia Law Review 214, Feb. 1924, article by F. P. Lee, Senate Legislative Counsel; likewise *In re Hamlin*, 226 N. Y. 407.

forces a means of gauging their strength. The rule, as proposed, would not work unless such forces could show, by securing 218 signatures, that they represented the prevailing sentiment of the House upon one issue at least. If they could not do this, they could not overlook the conclusion that a new party born at that time would prove abortive.

Moreover, the new leadership would more likely be found in Congress. Men who hold office view political questions from a more practical standpoint, as a rule, than do outside organizers. Not only would they be less apt to launch a party prematurely, but, when they judged that the time had arrived, the resultant movement would probably be more reasonable in its nature because of their contact with actual politics.

Action by means of the discharge rule to bring a favorite bill out of committee, or to secure a special order for such a bill which is already on the calendar, would aid in making plain to the country the purposes of the new movement. When the breakup of parties is at hand, such a showing of power would help the old-line leaders to read the signs of the times, and, if unable to reform their own parties, to get "on the band wagon" of the new. It would thus facilitate the transition through the three-party stage to a truer alignment on a two-party basis.

The threat to our government will come, if at all, not from men in office, but from men of critical tendencies with grievances, and a speculative plan for their redress. An orderly means of action, such as the proposed discharge rule, will direct discontent into legal ways of expression. By giving some outlet to criticism, reducing the causes of provocation and the danger of arbitrary power, it will lessen the chances of "direct action." Its tendency seems to be in the long run to stabilize the popular branch of the government.

CHAPTER XII

HOUSE EFFICIENCY

It is appropriate in conclusion to re-raise the question which was broached at the beginning of this study of party government, and which we have seen underlies most of the problems of legislative method. Does liberty of individual action, or the discipline of party control, produce a better parliamentary body? Either extreme clearly must be rejected. But there remains a large area of doubtful territory to which one or the other of these principles may be applied, according as it promotes the efficiency of the House as a legislative body.

There is no single, sure measure of that efficiency. We are dealing with imponderables. There are elements of both good and bad in the results which are readiest at hand for use in testing the success of a Congress. A high total of laws enacted, though commonly featured in the record of accomplishments given by the Floor Leader at the conclusion of each session, depends for its value on the importance and the wisdom of the enactments rather than upon their number.[1] "Steamroller" methods might result in

[1] Mr. Tilson, Republican leader of the Sixty-ninth Congress, told the Alumni of the Yale Law School on June 21, 1926, that "when the work of the session is done it will probably be said with truth that the most important work I have done during the session has been in the direction of preventing the passage of bad or unnecessary laws." (Reprinted, C. R. 69-1, p. 12111.)

Nevertheless, his statistical summary after the adjournment showed a total of both public and private laws well in excess of the output of a first session during the past decade. This achievement he called the "routine work" of the session. C. R. 69-1, p. 12725; extension of remarks under date of July 3, 1926.

many laws, which, however, might be inferior or unpopular because the House was not allowed to scrutinize and perfect them.

Ability to round up the necessary work of a Congress promptly may be set down as a count in favor of effective leadership. Despatch in regard to supply bills gives a general impression of efficiency. But speed even here may be at the expense of careful scrutiny (which is not, to be sure, so important under the budget system), or may stand in lieu of action on needed general legislation. The Sixty-ninth Congress, during its long session, was composed of a moderate Republican majority, rather unusually cohesive, which upheld its party leaders in their program. Under these conditions, the last of the regular annual appropriation bills (the Legislative) passed the House on April 7, 1926. In the corresponding session of the preceding Congress, however, under more liberal rules, when there was a nominal Republican majority, prone at all times to desert the official leadership, the same bill did not pass until May 29th. In that year (1924), four great appropriation bills remained for consideration and passage after April 7th.

The Democrats, when in control, seem to have transacted their business with less despatch than the Republicans before and after. To be sure, they passed important non-fiscal legislation before the outbreak of the World War, and the appropriation bills were swollen and complicated while the war was on. But the emergency, it seems, should have been a counter-incentive to speed. Congressman Madden on January 6, 1920 told the House that not once during the four Congresses when the Democrats were in the majority did they succeed in passing all the appropriation bills by the beginning of the fiscal year for which the

bills provided. He ascribed this failure mainly to a misuse of the privilege of debate under the five-minute rule. During those four Congresses (Sixty-second through Sixty-fifth), the average length of the "long" sessions had been 307 days, as contrasted with 184 days in the four Congresses which had preceded, under the centralized control of Speaker Cannon.[1]

The Searchlight on Congress, a magazine which usually takes the individualistic viewpoint, said in its issue of April 1, 1916 (p. 4) regarding the Sixty-fourth Congress, which had been sitting since December:

"No session of Congress ever better illustrated the need of a responsible budget system to replace the existing pork-barrel method of making appropriations. Aside from the special pensions, claims and bridge acts, and three urgent deficiency bills, none of the regular appropriation bills have been enacted. The House has passed only three, the post-office measure, the legislative, executive and judicial bill, and the Indian appropriation bill. The Indian appropriation bill, still pending business, is the only appropriation measure which has been taken up in the Senate."

Under an active party leadership which is returned to power in the election, time is gained through the continuity of control over committees. They can be named unofficially before the expiration of the old Congress, and during the months intervening before the new Congress formally meets and organizes, they may prepare the most important measures for report early in the session. Thus after the election of 1896, Speaker Reed assured the Committee on Ways and Means that it was to remain substantially unchanged in the next Congress. Tariff legislation would then be possible, as there was to be a Republican President as well as a Republican Congress. During the holdover session of 1896-7, the Committee worked on the

[1] C. R. 66-2, p. 1139.

Dingley tariff bill, which it reported to the House within three days after the meeting of the new Congress. The bill was passed within less than two weeks under the iron rule of Reed. Similarly, Ways and Means Committees held hearings, or prepared the three subsequent tariffs, in 1909, 1913, and 1921, before the expiration of the old Congresses. In the first session of the Sixty-ninth Congress, Chairman Green of the Committee on Ways and Means was able to present the important Revenue bill (H.R.1) on the first day (Dec. 7, 1925). The following day it was taken up for consideration under an agreement, and passed on December 18th after five days each of general debate and amendment under the five-minute rule. By February 13, 1926, the House had proceeded so far with the necessary annual supply and appropriation bills, that even Mr. Garrett, leader of the Democratic opposition, conceded that "the state of public business is pretty good. Things are moving pretty rapidly."[1]

Nevertheless, speed is not the supreme virtue, despite the force of the impression which it makes upon the public mind. "Although I am firmly convinced," wrote a student of politics in 1909, "that the lack of discussion is more pernicious than any of the other evils, and although the evidence therefore seems sufficiently on the surface, I am well aware that public opinion fails to recognize this fact. The newspapers seem to consider lightning speed the one virtue to be demanded of a legislature. If it does not begin putting bills on their final passage on the third day after its convening, the members are sure to be charged with idling."[2]

[1] C. R. 69-1, p. 3957.
[2] Bruncken, "Defective Methods of Legislation," *Am. Polit. Sci. Rev.*, III, p. 176.

Although the momentary approval of the country goes with economy of time, it seems probable that this type of management, if carried to the extreme at the expense of discussion, results in the end in lowering the prestige of the House as a deliberative body. If Congressmen are elected merely because they are "regular," and given preferment in the House organization simply because they will cooperate uncritically in handling a large amount of routine business, men of ability to debate public questions will be less apt to enter Congress. They will gravitate more and more to the Senate, where there is greater freedom. The revitalizing of debate in the House of Representatives appealed to the political sense of such a man as Samuel Gompers, who felt that the Sixty-eighth Congress was superior to its predecessors on this score. He hailed the liberalizing of the rules in that Congress as an advance, and expressed the hope that "this is but the forerunner of further successes for constructive measures in the House."[1] While the type of oratory elsewhere, as well as in Congress, has changed, there is still a place for the speech, convincing in law, facts, or philosophy, which is aimed to enlighten the House and the country.

In general, the country pays little heed to legislation pending in the House, except when there is concentrated debate on the floor, with a chance of affecting the fate of pending measures. Speeches of the kind which are made during general debate on appropriation bills, touching upon controversial matters not then pending, fall so wide of their mark that slight attention is paid them by the press. There is little of the cross-fire of live debate on such occasions. If, so, the real analysis of a measure is confined to com-

[1] Quoted in *New York Times*, Dec. 6, 1923, p. 2.

mittee, the public is debarred by the tradition of secrecy from following the arguments.

A generous opportunity for debate should be allowed by the House leaders, during which they should seek to rally their adherents by presenting the party position with the strongest possible arguments, and by appealing to party loyalty. While it is not necessary here to enter into a discussion of the proposed mechanical changes in the House routine, such as electrical voting, abandonment of the clerk's reading of bills, and the use of joint committees for the purpose of holding hearings, it is evident that these devices would increase the time available for real debate.[1]

Perhaps the most likely means of comparing the strength of the House in different Congresses is to note its success in dealing with the Senate. Is it better able to hold its own as against the Senate when party leaders have supreme control, or when the rank and file are allowed to express their opinions and to determine the action of the House? In contrasting the Senate and House with a view to studying conditions in the House, we are dealing, it is true, with two variables instead of one. But the range of variation does not appear to be so great in the Senate, since under its rules free discussion is guaranteed. There the organization, however ably led, can never approach the position of dominance which it held, for example, under Speaker Cannon in the House.

[1] Representative Luce, before the Rules Committee on April 8, 1926, stated that the reading of bills had been abandoned both in Massachusetts and in the English Parliament. He figured that in the Sixty-eighth Congress, six weeks in time had been consumed in this way by the reading clerk, and nearly 50 working days, or two months in addition, on roll-calls.

A roll-call vote on April 26, 1926, was found, by actual timing, to take 24½ minutes. The roll is called twice,—the second time, only the names of those who did not vote on the first call.

Because it is often under the whip-hand of the administration, the House suffers in contrast with the Senate [1] as an agency for investigating the conduct of administrative departments. "The House committees are not certain," wrote Bryce, "to detect abuses or peculation, for special committees of the Senate have repeatedly unearthed dark doings which had passed unsuspected the ordeal of a House investigation." [2] This inaptitude has since been illustrated many times, as by the Teapot Dome and the Veterans' Bureau disclosures. In these cases a partisan Rules Committee had previously refused to authorize investigations by the House.

It not infrequently happens that more rivalry develops between the chambers than between parties. Certain it is that either chamber gains strength, in the public estimation, at the expense of the other. To such an organ as the *Wall Street Journal,* the "stock" of the House has risen appreciably since it has come under closer party control,—at least, of the Republican party. "The deterioration in the quality of the United States Senate in recent years would be serious and even tragic," ran an editorial on December 10, 1925, "if it were not ridiculous. The growing good sense and efficiency of the House of Representatives is a distinct offset."

This viewpoint is in a moderate way upheld by the success of assertive leaders in securing action upon House bills by the Senate. This is in part a corollary of the fact that they dispose of the routine business of the House more promptly, giving the Senate time to act upon it. An analysis of final calendars shows that in the Sixty-seventh Congress, when Republican leadership was arbitrary, only 131 House bills which were approved by the House failed to pass through the succeeding stages to final enactment as law. In the Sixty-eighth Congress, however, 153 such bills did not become law.

[1] For a consideration of this function of the Senate, and its connection with closure, see Rogers, "The American Senate" (1926).

[2] "American Commonwealth," p. 161 (1914 ed.).

On the other hand, House leaders seem to have imposed a rather more severe check upon Senate legislation in the Sixty-seventh Congress, since 384 Senate bills came over to the House and failed of enactment there, as against 205 and 335 in the Congresses before and after, respectively, and 241 in the Sixty-ninth Congress. A similarly greater "veto" was exercised on Senate Joint Resolutions, of which 48 were held up by the House in the Sixty-seventh Congress. This number contrasts with 31 in the Sixty-sixth Congress, 22 in the Sixty-eighth, and 12 in the Sixty-ninth.

The evidence of these totals is somewhat favorable to strong leadership, although the "veto" of Senate measures is open to the other interpretation of mere failure on the part of the House to round up the business sent over to it. Totals of minor matters, moreover, may grow large in lieu of action on important general legislation.

Certain Senators have felt, to the contrary, that the House is a weaker adversary when it is under the dictation of leaders than when it is free to practice a reasonable measure of self-determination. The Senate selfishly desired a larger House, according to a statement on October 14, 1921 by Representative Cooper of Wisconsin. "A very distinguished former Member of the United States Senate told the Republican conference last night that a United States Senator of prominence had said to him that the Senate wanted the House increased in Membership because it gave all the power to the Committee on Rules, and

that is what the Senate wanted."[1] Professor Lindsay Rogers took this attitude to mean that the larger the House, the greater would be the concentration of power in the hands of a few leaders, and that "the Senate could deal much more effectively with the masters of a shackled chamber than with the agents of a deliberative assembly."[2]

James Madison, the "father" of the *Constitution*, expected that the House would have "no small advantage" over the Senate, because of its power to originate money bills.[3] The House, however, has obtained no such mastery. The observation has become trite that money bills are rewritten in a wholesale manner by the Senate.

Over appropriation bills, the unified and strict control which now operates in the House is a good thing in the interest of economy. Since the inception of the budget system, the regular course of appropriations, with reference to total amounts provided in the bills at various stages of their progress, has been as follows:—the House Committee on Appropriations substantially reduces the estimates of the Director of the Budget in the bills which it reports to the House; it then battles against the guerilla attempts of Members to raise items in the bills during the stage of amendment in the House, with the result that the totals of bills as they are passed by the House are only slightly increased; the Senate raises these figures to a considerable aggregate; in conference between the two chambers, finally, the totals are again pared down. Only once (1924), however, out of the four years, did the

[1] C. R. 67-1, p. 6324.
[2] *American Political Science Review*, vol. XVI, p. 52.
[3] *The Federalist*, No. 58. The constitutional requirement specified only "Bills for Raising Revenue," but in settled Congressional practice, appropriation bills also originate in the House.

House conferees succeed in bringing the Senators to reduce the amounts so much as one-half of the total in disagreement. Although the final result is a saving on the Budget estimates, the point to be noted here is that the amounts of the bills were always least as they came from the House Committee. In contrast with this Committee, the Executive has been likened in the matter of economy to "the moon, only reflecting the light of the sun,"[1]—but, it may be added, resplendent in a halo of publicity.

Control over appropriations in the House has been a matter of committee leadership and moral suasion. Both in method and in aim it has been highly praiseworthy. Since closure in its more strenuous forms has not lately been applied to appropriation bills, we must seek its effect as applied to general legislation and tax measures. Fiscal economy will no longer be the single measure of success, but rather the part which the House plays in the conflict of ideas and in the framing of statutes.

It is to be noted in the first place that because of lack of time when the House operates under a "gag rule," administrative departments which seek to suggest changes often withhold their remedies until the bill reaches the Senate. The bill is allowed to be engineered through the House without delay, if fast time can be made by means of a closely controlled House organization; and proposals for improvement are put forward in the Senate, which has no rigid timetable to be disturbed. In the case of the Fordney-McCumber tariff act of 1922, for example, on which debate was curtailed in the House, the administrative features were but little changed from those sent down

[1] Cf. the history of appropriations under the budget system, and statistical statements inserted in the *Record* by Representative Buchanan of Texas, C. R. 69-1, pp. 7989-7992; Apr. 23, 1926.

by the Tariff Commission. Subsequently, during the long-drawn-out period of Senate consideration, the Legislative Counsel of that body held conferences with the Customs Division of the Treasury Department, the Bureau of Navigation of the Department of Commerce, and the Tariff Commission. As a result of these conferences, the Senate extensively revised the Tariff Commission's draft of the administrative features of the bill. To the extent that "short-cut" methods in the House force the aid of the technical services to gravitate to the Senate, they will help it to function as the more important legislative body.

Sometimes, in fact, bills are hurried to final passage in the House when they are admittedly unsatisfactory in some features, with the understanding that they will be corrected in the Senate. The sentiment, "leave it to the Senate," while sometimes applied to minor matters of detail, may also, under strictures of procedure, influence more important decisions. Although the Senate has, of course, a perfectly legitimate rôle to play in the revision of bills, they should represent the best judgment of the House before being submitted to it. Over-abrupt action of the House has the effect of expanding the Senate's part in legislation, and contracting its own.

The manner in which differences between the two chambers have been settled in recent years throws some light upon the effect of varying conditions in the House. The Revenue bill of 1921 was passed in the first session of the Sixty-seventh Congress, when, with an overwhelming majority,[1] the Republican leaders were dominating the House in a high-handed fashion, carrying out the will of the administration. Two days of general debate were allowed in the House,

[1] For party strength in Congress since 1855, see Appendix A.

but there was no time for offering amendments of private Members. In contrast, the Senate debated the bill in full for almost seven weeks, during which time there were nearly a hundred roll-calls. Besides the usual Democratic motions to recommit, offered at the stages of final passage in the House and adoption of the conference report, the only opportunity for Representatives to depart from the program of the leaders was secured, under duress, in the form of a chance to instruct the conferees to recede from the 32% surtax, and agree with the 50% for which the Senate was contending. Agreement was authorized, despite pressure from the leaders, who were fortified with a letter from President Harding. Under such conditions, when the true disposition of the House was mostly suppressed, the Senate receded on only 7 points which were in disagreement, while it gained its way on 758,[1] and compromised on 68. This was a far weaker showing for the House than in the Revenue act of 1918, when the Senate receded on 69, the House on 417, and 114 differences were compromised.

The success of the House in 1921 was also less than in the two following Congresses. The Revenue act of 1924 was passed by a House in which the insurgent Republicans held the balance of power, and in which the Republican managers could sometimes lead, but never drive the Members in support of their program. Generous debate was allowed, and the House voted on seven crucial amendments before it passed the bill.

[1] This enormous disparity was no doubt increased by the fact that Senator Penrose made greater use than did Representative Fordney of technical assistance, calling over Mr. Beaman, the Legislative Draftsman of the House, to assist him. Then, too, the act as it originated in the House was simply in amendment of the existing Revenue act, while the Senate proposed a new Revenue act, complete in itself. This change in procedure necessitated many amendments, in order to include in the House bill all the provisions of the existing Revenue act of 1918 which were not amended by the House.

This time Mr. Green of Iowa, who was likewise one of the conferees in 1921, had a very different result to announce to the House. In presenting the conference report, he said: "Mr. Speaker, the managers of conference on the part of the House come back to the House with great pleasure, reporting that they return this bill to the House substantially as it left it, the Senate having receded in the most important particulars."[1] This time the Senate receded on 99 amendments, which was almost equal to the number on which the House yielded, namely, 128. There were compromises in the cases of 33. When it is considered that the Senate has the opportunity to revise and criticize the whole bill, and that some of the corrections are merely mechanical, while the House has a chance to find flaws only in the matter of the Senate amendments, the conference report of 1924 must be set down as highly creditable to the House.

The Revenue act of 1926 found the organization again in unchallenged control of the House. The Republican leaders in the Sixty-ninth Congress led without resort to the arbitrary tactics of the Sixty-seventh, for they were fresh from their victories in barring the "insurgent" Republicans from the caucus and modifying the discharge rule. Their chastened followers were in a mood to be "regular." "It is generally understood," said Mr. Lozier (Dem.) of Missouri, in proposing an amendment, "that probably all amendments offered to the pending bill will be defeated."[2] The truth of this prophecy was shown by the fact that, although there were 18 divisions during the five days of debate in Committee of the Whole for amendment under the five-minute rule, in every case the position of the managers of the bill was sustained. When

[1] C. R. 68-1, p. 9539; May 26, 1924.
[2] C. R. 69-1, p. 773; Dec. 14, 1925.

the bill was reported to the House, there was no demand for a separate roll-call vote on any of the amendments, and the Democratic motion to recommit was defeated by 147 to 267. Nevertheless, the position of the House in conference with the Senate was strengthened to a degree by the fact that there had been full debate and the House had definitely indicated its support of the leaders. The Senate receded on 19 amendments, the House on 145, and 42 were compromised. This record was not nearly so favorable to the House as in the Sixty-eighth Congress, although Mr. Green and Senator Smoot headed the House and Senate conferees, respectively, on both occasions. The outcome was somewhat better, however, than in the Sixty-seventh Congress. The latter circumstances may perhaps be credited to the fact that in the case of the Revenue act of 1926, at least the appearance of freedom was allowed the rank and file of the Membership to debate and pass upon the details of the bill.

It appears that the managers on the part of the House are better able to prevail in conference if their position has been won after free discussion and decision by the House of the points at issue. They are more apt to succeed if the House has a mind of its own, than if they hold it in "leading-strings." Let us suppose that the conferees meet to iron out a hotly contested difference. "Senatorial courtesy" has operated, perhaps, to place an amendment in the bill at the instance of some Senator or Senators whose local interests are affected. The managers for the Senate press their cause. They appeal to the sportsmanship of the House Members, cite past favors rendered, or perhaps offer some concession by way of barter. If the chairman of the House conferees holds the rights of the House "in the palm of his hand," the personal

appeal to him is strong. He and his colleagues can yield if they will, and they are apt to do so. If, however, they are in fact as well as in name the agents of the House, which has already expressed its will freely and definitely, and may insist upon its position, they are less apt to yield.

"We should be glad to disregard our personal judgment, and to recede," they may say. "We would do so, as far as we ourselves are concerned, if we could control the situation in the House. But there are strong forces in our party which are unalterably opposed on grounds of principle, and we could not get the report adopted."

The poor showing on the Fordney tariff bill may, in no small measure, have resulted from the fact that it passed the House in nine days under a gag rule, which allowed amendments to be offered in the House to only five schedules in a bill of over a thousand items. It was debated for four months in the Senate, where more than 2,000 amendments were made. In conference, the Senate receded on only 71 of these, while the House receded on 2,061, and agreed to 304 others with amendment. It should be explained, however, that the Senate had changed the basis of valuation from American to foreign value, thus necessitating many changes in the rates, irrespective of whether or not the actual amount of the duty was changed from the House rates. In receding on this general principle, the House of course agreed *en masse* to a large number of amendments. These enormous totals are less reliable an index, therefore, than the outcome with regard to certain specific contests of importance.

Individual items which came most into dispute likewise bore out the principle that the House is able to prevail more often when it has had an opportunity to

express its will freely. For example, the provision relating to dyestuffs was one of the few to which amendment was permitted. The Frear amendment, adopted on July 21, 1921 by the House by a vote of 209 to 193, overthrew the dyestuffs embargo which had been advocated by the Committee on Ways and Means. The Senate, after much vacillation, refrained from reinserting the embargo in the face of the clearly expressed will of the House. In contrast, there was no opportunity to change the rates on fertilizer potash when the bill was before the House. The leaders presumed to speak the will of the House in conference, in opposing the Senate amendment which put potash on the free list. However, when the conference report was brought before the House, it was rejected, and Mr. Garner's (Dem.) motion to recommit with instructions to agree to the Senate amendment was carried, 177—130.[1] Such an episode, when the House has not been allowed to express itself, and subsequently repudiates its conferees, is bound to weaken in future their prestige in conference.

The history of other tariff bills, too, shows that the chamber in which there has been a strong expression of will usually prevails. Closure tends to lessen the effectiveness of an appeal to conference.

Similarly, the Vreeland currency measure passed the House in 1908 under suspension of the rules, when a Democratic substitute, which had no prospect of success, was the only opportunity to change the bill. The Senate substituted the Aldrich measure, which was in many respects obnoxious to the House. The conference report on the differences between the two chambers was adopted, like the bill when it originally passed the House, under suspension of rules. This method of procedure cut off any attempt to recommit

[1] C. R. 67-2, p. 12531; Sept. 13, 1922.

with instructions. Members had to accept the report or nothing. Under these circumstances, the law resulting from the conference adjustments savored more of the Aldrich than of the Vreeland plan. Mr. Glass said that it embodied the essential features of the former, "with a gauze curtain erected before it by the gentleman from New York (Mr. Vreeland) hoping to hide its deformity." [1]

Contrast the outcome in the Forty-second Congress, when there was a sharp issue between the chambers on "Ku Klux" legislation, and the Senate had to modify its bill to meet the objections of the House. James A. Garfield had voted with a non-partisan majority in the House to kill the Senate bill.[2] But when the same plan of coercion was attached as a "rider" to an appropriation bill, he felt obliged to yield to the Senate demands in conference. As Chairman of the House Committee on Appropriations, therefore, he sponsored the conference report, which would have been adopted if the House had been manageable. But the opponents of coercion would not be driven. A filibuster ensued against the report, which was twice recommitted to conference. In the end, the House conferees gained concessions to the moderate views of their colleagues.[3]

On some occasions, it is true, the administration forces in the House have been able to carry through their program against the will of the Senate and the suppressed opposition of a majority in their own chamber. This is most likely to happen when new legislation would conflict with the policy of the budget. Such seems to have been the case at the close of the "long" session of the Sixty-ninth Congress with re-

[1] C. R. 60-1, p. 7069; May 27, 1908.
[2] *Congressional Globe*, 42-2, p. 4323; June 7, 1872.
[3] *Ibid.*, p. 4453; June 10, 1872 (legislative day of June 8).

gard to retirement annuities in the Civil Service Retirement bill. The Senate favored $1200, and even the House committee had reported the bill at that figure. But the Director of the Budget advised the President that such an increase would be contrary to the budget plan, and suggested $1000. Mr. Lehlbach, Chairman of the House committee, could not make arrangements with the House leaders to bring up his bill except on the basis of $1000, and under suspension of the rules to prevent amendment in the House. Similarly, in conference, the House managers were under obligation to the administration forces to be unyielding. In the meantime Members who favored $1200 confidently claimed on the floor of the House that 75 per cent of the Membership would support the contention of the Senate. But the House was not allowed to express itself. In order to secure the possible benefits of the bill, the Senate gave way and the House approved the conference report at $1000 during the last hour of the session.[1]

The will of the leaders can rarely be "put over" in this fashion, however, outside the field of budgetary control. In 1921, administration forces opposed in the Naval appropriation bill the particular form of an amendment by Senator Borah, which provided for the calling of a disarmament conference. They thought it "unwisely restrictive," putting Congress too much in control, and it was coolly received at first in high executive circles. But sentiment favoring the resolution was so strong in the House that administration leaders did not dare to "buck the tide." President Harding instead sent a letter [2] saying that he was not concerned about the phraseology of the proposal, and

[1] See Mr. Lehlbach's statement, C. R. 69-1, p. 11990; June 25, 1926. Also the speeches in the House on July 1, 1926.
[2] C. R. 67-1, pp. 3223-4; June 29, 1921.

the House concurred in the amendment by a vote of 332 to 4.

The Senate has certain natural advantages over the House in conference strategy. It enjoys a continuous life, in which even the individual Senator participates for a term of six years. If the Senate cannot get its way in one Congress, it can threaten to hold out in the hope of succeeding in the next. Sometimes, besides, as Professor Reinsch observed, in the last days of a session the Senate managers of conference "are apt to use the inability of that body to close discussion as a cudgel to be held over the House of Representatives, in order to force it to accept the point of view of the Senate." [1]

To offset these disadvantages, the House needs to avail itself of every possible means to improve its position in conference. The party chiefs would do well, after consultation with the President and with Senate spokesmen, to put forward a strong claim to constant, responsible leadership among their colleagues. But for the sake of conference prestige, as also for the preservation of a vigorous morale among Members, party leaders ought to hold themselves at all times openly accountable to the House, or to the caucus. In the former case, they might best allow a reasonable opportunity for debate, using the discussion as an occasion to justify their proposals.

The chaos of politics cannot become order simply through a demand for party regularity on all business. The valid means of enjoining unity in the name of party is action by the caucus, when a proportion greater than a bare majority of party members concur. Such activity of the caucus is a wholesome means of interpreting the campaign platform. The preponderance of agreement necessary, as proposed,[1] to make decisions of the caucus binding upon partisans would in effect narrow the party program to a single policy, or to a few distinctively party principles. The tendency, by reaction, to restrict the content of platforms themselves would be wholesome. A short platform, as truly as the "short ballot," would be an aid to intelligent voting.

[1] "American Legislatures and Legislative Methods," p. 115 (1911).

The clear-cut distinction between party principles and non-partisan affairs would leave a wide range of subjects about which primary contests could be waged. Here the principle of individual responsibility might operate, within the major alignments based upon declared party principles. Thus the two stages of election—the primary as well as the final contest—would broaden the range of subjects upon which the representative system might accurately reflect public opinion.

It is desirable that the party in opposition seek to intensify rather than to break down the responsibility of the majority on paramount issues. Its caucus may well decide when to "join" issue. The definite assumption of party responsibility in specific instances would add meaning and understanding to partisan politics.

Upon measures not endorsed by the caucus, the basis of action must be individual judgment, tempered by instructions from constituents. But the proposals of the majority leaders should be given the benefit of doubts entertained by private Members of both parties through lack of information or of expert advice. There needs to be a parliamentary opening by which Members can appeal from the judgment of a committee, and discharge it from consideration of a retarded bill. But the nature of modern legislation is so

[1] Chapter I, esp. p. 34.

complicated and technical that the attitude of the committees must be respected by the House in all but the most exceptional cases. The aggregate of business on the calendars, too, is so great that deference to party leaders best promotes the everyday activities of the House. But such deference in non-partisan affairs must remain a matter of attitude, to be encouraged through merit, rather than of discipline, to be enforced by "gag rules" and by the expedients of punishment and reward.

APPENDIX A.

POLITICAL DIVISIONS OF THE HOUSE OF REPRESENTATIVES AND SENATE OF THE UNITED STATES FROM 1855 (THIRTY-FOURTH CONGRESS) TO 1927–1929 (SEVENTIETH CONGRESS).[1]

CONGRESS	YEAR	HOUSE OF REPRESENTATIVES					SENATE				
		Number of Representatives	Republicans	Democrats	Third party	Vacant	Number of Senators	Republicans	Democrats	Third party	Vacant
34	1855	234	108	83	43	..	62	15	42	5	..
35	1857	237	92	131	14	..	64	20	39	5	..
36	1859	237	113	101	23	..	66	26	38	2	..
37	1861	178	106	42	28	2	50	31	11	7	1
38	1863	183	103	80	..	..	51	39	12	..	..
39	1865	191	145	46	..	..	52	42	10	..	..
40	1867	193	143	49	..	1	53	42	11	..	..
41	1869	243	170	73	..	..	74	61	11	..	2
42	1871	243	139	104	..	..	74	57	17	..	..
43	1873	293	203	88	..	2	74	54	19	..	1
44	1875	293	107	181	3	2	66	46	29	..	1
45	1877	293	137	156	..	..	76	39	36	1	..
46	1879	293	128	150	14	1	76	33	43	..	..
47	1881	293	152	130	11	..	76	37	37	2	..
48	1883	325	119	200	6	..	76	40	36	..	..
49	1885	325	140	182	2	1	76	41	34	..	1
50	1887	325	151	170	4	..	76	39	37	..	..
51	1889	330	173	156	1	..	84	47	37	..	..
52	1891	333	88	231	14	..	88	47	39	2	..
53	1893	357	126	220	8	3	86	38	44	3	1
54	1895	357	246	104	7	..	86	42	39	5	..
55	1897	357	206	134	16	1	90	46	34	10	..
56	1899	357	185	163	9	..	90	53	26	11	..
57	1901	357	198	153	5	1	90	56	29	3	2
58	1903	386	207	178	..	1	90	58	32	..	..
59	1905	386	250	136	..	..	90	58	32	..	..
60	1907	386	222	164	..	..	92	61	29	..	2
61	1909	391	219	172	..	..	92	59	32	..	1
62	1911	391	162	228	1	..	92	49	42	..	1
63	1913	435	127	290	18	..	96	44	51	1	..
64	1915	435	193	231	8	3	96	39	56	1	..
65	1917	435	216	210	9	..	96	42	53	1	..
66	1919	435	237	191	7	..	96	48	47	1	..
67	1921	435	300	132	1	2	96	59	37	..	..
68	1923	435	225	207	3	..	96	51	43	2	..
69	1925	435	247	183	5	..	96	54	40	1	1
70	1927	435	237	195	3	..	96	47	47	1	1

[1] From the *Unofficial List*, 1926, compiled by Wm. Tyler Page, Clerk of the House of Representatives.

APPENDIX B.

CONSTITUTIONAL PROVISIONS NOW OPERATIVE RELATING TO THE ESTABLISHMENT OF THE HOUSE OF REPRESENTATIVES.

The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature. Art. I, sec. 2, paragraph 1.

No Person shall be a Representative who shall not have attained to the Age of twenty-five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen. I, 2, ¶ 2.

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State. 14th amend., sec. 2.

The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative. From I, 2, ¶ 3.

The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations. From I, 4, ¶ 1.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies. I, 2, ¶ 4.

The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day. I, 4, ¶ 2.

[The President] shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper. From II, 3.

The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They [the Senators and Representatives] shall in all Cases, except Treason, Felony, and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place. I, 6, ¶ 1.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been increased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office. I, 6, ¶ 2.

No Person holding any Office of Profit or Trust under them [the United States], shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State. From I, 9, ¶ 8.

No Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector [of President and Vice-President]. From II, 1, ¶ 2.

No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each House, remove such disability. 14th amend., sec. 3.

APPENDIX C.

CONSTITUTIONAL PROVISIONS RELATING TO PROCEDURE IN THE HOUSE OF REPRESENTATIVES

The House of Representatives shall chuse their Speaker and other Officers. From I, 2, ¶ 5.

Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide. I, 5, ¶ 1.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and, with the Concurrence of two thirds, expel a Member. I, 5, ¶ 2.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal. I, 5, ¶ 3.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting. I, 5, ¶ 4.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. From I, 7, ¶ 2.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President

of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill. I, 7, ¶ 3.

(A joint resolution proposing an amendment to the Constitution requires a two-thirds vote of both Houses on first passage, and is not presented to the President for his approval. Other "joint" resolutions, however, must be approved. But "concurrent" resolutions, despite the specific language of the Constitution, are not, under the practice, presented to the President, unless they are legislative in effect.)

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States. VI, ¶ 3.

(For procedure in the event of election of a President by the House, see appendix D.)

APPENDIX D

CONSTITUTIONAL PROVISIONS DISTINGUISHING BETWEEN THE FUNCTIONS OF THE HOUSE AND SENATE.

[The House of Representatives] shall have the sole Power of Impeachment. From I, 2, ¶ 5.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present. I, 3, ¶ 6.

All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills. I, 7, ¶ 1.

[The President] shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law; but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments. II, 2, ¶ 2.

The President of the Senate shall, in presence of the Senate and House of Representatives, open all the certificates [of electoral votes] and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next

following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. From 12th amend.

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